AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES
	1 | 150

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*
P00016	SEE BLOCK 16B	See Schedule	

6. ISSUED BY CODE	7. ADMINISTERED BY *(If other than Item 6)* CODE
NASA Marshall Space Flight Center Office of Procurement Marshall Space Flight Center AL 35812	NASA Marshall Space Flight Center Marshall Space Flight Center AL 35812

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and Zip Code)*	(X)	9A. AMENDMENT OF SOLICITATION NO.
SPACEX . 1 ROCKET RD HAWTHORNE CA 90250-6844		9B. DATED *(SEE ITEM 11)*
	X	10A. MODIFICATION OF CONTRACT/ORDER NO. 80MSFC20C0034
CODE 3BVL8 FACILITY CODE		10B. DATED *(SEE ITEM 13)* 05/13/2020

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communica ion, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

See Continuation Sheet If Applicable

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	
☐	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
☐	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation data, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
☒	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.243-1 Changes - Fixed Price (AUG 1987) Alt. V (APR 1984)
☐	D. OTHER (*Specify type of modification and authority*)

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible)*

See Continuation Sheet If Applicable

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A NAME AND TITLE OF SIGNER *(Type or print)*	16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*
(b) (6)	Robyn Crabtree Contracting Officer

15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(b) (6) Digitally signed by (b) (6) DN: cn=(b) (6), o=Space Exploration Technologies Corp, ou=Legal, (b) (6), c=US Date: 2021.12.02 10:32:15 -08'00' *(Signature of person authorized to sign)*	2 Dec 2021	Robyn Crabtree Digitally signed by Robyn Crabtree Date: 2021.12.02 13:06:33 -06'00' *(Signature of Contracting Officer)*	

Previous edition unusable

STANDARD FORM 30 (REV. 11/2016)
Prescribed by GSA FAR (48 CFR) 53.243

NAME OF OFFEROR OR CONTRACTOR SPACEX

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	The purpose of this modification is to incorporate FAR Clause 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 21-03). As a result of this change, the following section is hereby updated as follows: Section I is hereby updated to incorporate FAR Clause 52.223-99 in full text. All other terms and conditions remain unchanged and in full force and effect. Payment Terms: Net 30 days FOB: Destination				

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SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

1852.216-78 FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is $3,031,455,921.24.

(End of clause)

MSFC 52.216-90 IDIQ CONTRACT VALUE BY PERIOD OF PERFORMANCE (MAY 2017)

The IDIQ maximum potential not-to-exceed (NTE) value of this contract including Options, is (***$250,000,000***). This contract provides for performance of (***Firm Fixed-Price***) indefinite-delivery indefinite- quantity (IDIQ) task/delivery orders. The NTE value shall not be exceeded without the prior written approval of the Contracting Officer.

The values for each period of performance are set forth below:

	PERIOD OF PERFORMANCE	MINIMUM VALUE	MAXIMUM VALUE
Base Contract	12 months	$10,000	$100,000,000
Option A	4 years	$10,000	$150,000,000

NOTE: Any unused IDIQ value for any period will roll over to the subsequent period.

(End of clause)

MSFC 52.216-91 SUPPLIES AND/OR SERVICES TO BE PROVIDED AND TYPE OF CONTRACT (JUN 2017)

(a) The contractor shall provide all resources (except as may be expressly stated in the contract as furnished by the Government) necessary to perform and/or deliver the services in accordance with Attachment J-1, entitled "Statement of Work."

(b) This is a Firm Fixed-Price type contract with a Firm Fixed-Price IDIQ component.

(c) Indefinite-Delivery, Indefinite-Quantity Work

In addition to the core mission requirements delineated in Attachment J-1, entitled "Statement of Work", IDIQ effort may be required to perform HLS-related tasks such as special studies, analysis, and/or support tasks as initiated by written direction from the Contracting Officer.

Content may include, but is not limited to: mission specific requirements, integration, evaluation of HLS use cases, extensibility studies of HLS technology, ground and flight interface definition, HLS emulator definition/specifications, trade studies, and capability assessments. The Government may order IDIQ services at any time after contract start in accordance with the procedures set forth in NFS Clause 1852.216-80, "Task Ordering Procedures," Clause 52.216-18, "Ordering," and Clause 52.216-19, "Order Limitations," of this contract. In performing these services, the contractor shall provide all required necessary labor, materials, travel, and ODCs as delineated in the individual Task Order proposals based on the rates delineated in Attachment J-13, IDIQ Fully-Burdened Labor Rates.

(End of clause)

MSFC 52.216-92 MATRIX OF CONTRACT LINE ITEMS (CLINs) (OCT 2017)

The current total contract value is as specified below. To separately track the components of the value, separate CLINs have been established as follows:

CLIN	DESCRIPTION	VALUE	OPTION STATUS
001	Base: 2024 HLS Design and Development – Period of Performance: ATP – 04/30/2021	(b) (4)	N/A
002	Base: 2026 HLS Design – Period of Performance: ATP – 04/30/2021	$1	N/A
003	Base: IDIQ for 2024 Long Lead Items – Ordering Period: ATP – 04/30/2021	$1	N/A
004	Base: IDIQ for Special Studies – Ordering Period: ATP – 04/30/2021	(b) (4)	N/A
005	Option A: 2024 HLS DDT&E and Demonstration Mission – Period of Performance: ATP – 2/28/2025		Exercised

006	RESERVED	$1	Not Exercised
007	RESERVED	$1	Not Exercised
008	Option A: IDIQ Special Studies IDIQ – Ordering Period: ATP – 2/28/2025	$10,000	Exercised
009	Option A: Docking System – Period of Performance: ATP – 2/28/2025	$1	Exercised
010	Option A: Sustaining Requirements and Preliminary Design – Period of Performance: ATP – 23 months	(b) (4)	Exercised
	Total Value of Base and All Exercised Options	**$3,031,455,921.24**	

(End of Clause)

MSFC 52.227-91 DATA REQUIREMENTS (JUN 2017)

(a) The contractor shall furnish all data identified and described in the data requirements list (DRL) of the data procurement document (DPD) which is attached to this contract. All expenses associated therewith are included in the estimated cost or firm fixed price of this contract, or any associated task orders if applicable.

(b) The Government reserves the right to delay the delivery of any or all data requirements descriptions (DRDs) specified in the DRL and such right may be exercised at no increase to the estimated cost or firm fixed price of this contract or any associated task orders.

(c) Nothing contained in this clause shall relieve the contractor from delivering data that is not identified and described in the DRL/DPD, but required under another section of this contract.

(d) To the extent that data required to be delivered under a DRD is also required to be delivered under another section of the contract, the requirements established by both the DRD and such

other contract section shall apply. In the event of a conflict between the data requirements of the DPD and another contract section, the specific contract section will take precedence.

(End of clause)

SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

MSFC 52.211-93 DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK/PERFORMANCE WORK STATEMENT (MAY 2019)

The Statement of Work is located within Attachment J-1, entitled “Statement of Work.”

(End of clause)

SECTION D - PACKAGING AND MARKING

1852.245-74 IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA-HDBK) 6003, Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques, and NASA Standard (NASA-STD) 6002, Applying Data Matrix Identification Symbols on Aerospace Parts or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property: and, (2) contain the data and data format required by the standards. This requirement includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.

(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

(1) Item Description.

(2) Unique Identification Number (License Tag).

(3) Unit Price.

(4) An explanation of the data used to make the unique identification number.

(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

(1) Date originally placed in service.

(2) Item condition.

(e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the applicable NASA center receiving activity.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of clause)

SECTION E - INSPECTION AND ACCEPTANCE

52.246-7 INSPECTION OF RESEARCH AND DEVELOPMENT—FIXED-PRICE (AUG 1996)

52.246-11 HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (DEC 2014)

(a) The Contractor shall comply with the higher-level quality standard(s) listed below.

Title	Number	Date	Tailoring
SAE Quality Management Systems-Requirements for Aviation, Space, and Defense Organizations	AS9100	REV D, DTD 2016-09	None

(b) The Contractor shall include applicable requirements of the higher-level quality standard(s) listed in paragraph (a) of this clause and the requirement to flow down such standards, as applicable, to sub-tier subcontracts, in—

(1) Any subcontract for critical and complex items (see 46.203(b) and (c)); or

(2) When the technical requirements of a subcontract require—

(i) Control of such things as design, work operations, in-process control, testing, and inspection; or

(ii) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(End of clause)

1852.246-71 GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	**Quality Assurance Location**	**Function**
*		

*It is not the intent for the Government to perform quality assurance inspections of hardware that the Government will not take delivery. In the case where it might be decided for the Government to take delivery, e.g. Active-Active-Docking-Adapter (AADA), government mandatory inspections would be determined as described in NPR 8735.002B, Management of Government Quality Assurance Functions for NASA Contracts, 8.0 Government Mandatory Inspection Points (GMIP). Note: DRD 1665CM-001, Active-Active Docking Adapter (AADA) Acceptance Data Package (ADP), has been drafted to describe deliverable documentation for hardware the Government will take delivery of.

(End of clause)

1852.246-73 HUMAN SPACE FLIGHT ITEM (MAR 1997)

SECTION F - DELIVERIES OR PERFORMANCE

52.242-15 STOP-WORK ORDER (AUG 1989)

MSFC 52.211-94 PERIOD OF PERFORMANCE (MAY 2017)

The period of performance for this contract is from ***05/13/2020*** through ***02/28/2025***.

(End of clause)

MSFC 52.237-91 PLACE OF PERFORMANCE (JUL 2018)

The Contractor shall perform the work under this contract at contractor's facility, subcontractor facilities and NASA centers with approved GTAs, and at such other locations as may be approved in writing by the Contracting Officer.

(End of clause)

SECTION G - CONTRACT ADMINISTRATION DATA

1852.227-70 NEW TECHNOLOGY—OTHER THAN A SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION (APR 2015)

(a) Definitions. As used in this clause—

"Administrator" means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

"Contract" has the meaning provided in the Federal Acquisition Regulation (FAR), Subpart 2.1-Definitions.

"Made" means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Reportable item" means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectable under Title 17 of the United States Code.

"Small business firm" means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the criteria and size standard adopted in the FAR Subpart 2.1 definitions for "small business concern" and for "small business subcontractor" will be used.)

"Subject invention" means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the National Aeronautics and Space Act (51 U.S.C. 20135(b)) (hereinafter "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item in accordance with paragraph (e)(2) of this clause the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver as described in paragraph (b)(3) of this clause, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act.

(2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) Waiver of rights.

(i) Section 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive all or any part of the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act. The

promulgated NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, provide procedures for the Contractor to submit petitions (requests) for waiver of rights and guidance for NASA in acting on petitions for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, the Contractor may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any invention or class of inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights has been granted, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention in which the Government has title and in any resulting patent, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404, Licensing of Government Owned Inventions. The Contractor's license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention

reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revoking or modifying the Contractor's license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Contractor's obligations.

(1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology-Other than a Small Business Firm or Nonprofit Organization clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose in writing each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology-Other than a Small Business Firm or Nonprofit Organization clause or within six months after the Contractor becomes aware that a reportable item has been made, whichever is earlier, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall identify the inventor(s) or innovator(s) and this contract under which the reportable item was made. It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, sale or offer for sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any sale, offer for sale, or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (including computer software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site http://invention.nasa.gov.

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim new technology summary reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions).

(ii) A final new technology summary report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to paragraph 27.302(j) of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contracting Officer may require the Contractor to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim new technology summary reports pursuant to paragraph (e)(4)(i) of this clause or a final new technology summary report pursuant to (e) (4) (ii); or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final new technology summary report pursuant to paragraph (e)(4)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; or

(ii) Include the clause at FAR 52.227-11, as modified by 1852.227-11, (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(iii) Modify the applicable clause in any subcontract hereunder (regardless of tier) to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor, the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(1) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(2) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(3) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract hereunder (regardless of tier) by identifying the subcontractor, the applicable patent rights clause in the subcontract, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Contractor in the clause of subparagraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(j) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the

requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

1852.227-72 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (APR 2015)

(a) For purposes of administration of the clause of this contract entitled "New Technology—Other than a Small Business Firm or Nonprofit Organization" or "Patent Rights—Ownership by the Contractor," whichever is included, the installation New Technology and Patent Representatives identified at *http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html* are hereby designated by the Contracting Officer to administer such clause for the appropriate installation:

(b) Disclosures of reportable items and of subject inventions, interim new technology summary reports, final new technology summary reports, utilization reports, and other reports required by the applicable "New Technology" or "Patent Rights—Ownership by the Contractor" clause, as well as any correspondence with respect to such matters, shall be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters shall be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology—Other than a Small Business Firm or Nonprofit Organization" clause or "Patent Rights—Ownership by the Contractor" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the aforementioned representatives are set forth in 1827.305-270 of the NASA FAR Supplement.

(End of clause)

1852.232-80 SUBMISSION OF VOUCHERS/INVOICES FOR PAYMENT (APR 2018)

(a) The designated payment office is the NASA Shared Services Center (NSSC) located at FMD Accounts Payable, Bldg. 1111, Jerry Hlass Road, Stennis Space Center, MS 39529.

(b) Except for classified vouchers, the Contractor shall submit all vouchers and invoices using the steps described at NSSC's Vendor Payment information web site at: https://www.nssc.nasa.gov/vendorpayment. Please contact the NSSC Customer Contact Center at 1-877-NSSC123 (1-877-677-2123) with any additional questions or comments.

(c) *Payment requests.*

(1) The payment periods are stipulated in the payment clause(s) contained in this contract.

(2) Vouchers submitted under cost type contracts and invoices submitted under fixed-price contracts shall include the items delineated in FAR 32.905(b) supported by relevant back-up documentation. Back-up documentation shall include at a minimum, the following information:

(i) *Vouchers.*

(A) Breakdown of billed labor costs and associated contractor generated supporting documentation for billed direct labor costs to include rates used and number of hours incurred.

(B) Breakdown of billed other direct costs (ODCs) and associated contractor generated supporting documentation for billed ODCs.

(C) Indirect rate(s) used to calculate the amount of billed indirect expenses.

(D) Progress reports, as required.

(ii) *Invoices.*

(A) Description of goods and services delivered as part of the contract's terms and conditions, including the dates of delivery/performance.

(B) Progress reports, as required.

(C) Date goods and services were performed.

(iii) *Fee vouchers.*

(A) Listing of all provisionally-billed fee by period or date earned since contract award.

(B) A reconciliation of all billed and earned fee.

(C) A clear explanation of the fee calculations.

(d) *Non-electronic payment requests.* The Contractor may submit a non-electronic voucher/invoice using the steps for non-electronic payment requests described at *https://www.nssc.nasa.gov/vendorpayment,* when any of the following conditions are met:

(1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor.

(2) The contract includes provisions allowing the contractor to submit vouchers or invoices using the steps for non-electronic payment. In such instances the Contractor agrees to

submit non-electronic payment requests using the method or methods specified in Section G of the contract.

(e) Improper vouchers/invoices. The NSSC Payment Office will notify the contractor of any apparent error, defect, or impropriety in a voucher/invoice within seven calendar days of receipt by the NSSC Payment Office. Inquiries regarding requests for payment should be directed to the NSSC as specified in paragraph (b) of this section.

(f) Other payment clauses. In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(g) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate payment request for the amount withheld will be required before payment for that amount may be made.

(End of clause)

1852.245-71 INSTALLATION—ACCOUNTABLE GOVERNMENT PROPERTY (JUN 2018)

(a) The Government property described in paragraph (c) of this clause may be made available to the Contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property unless authorized by the Contracting Officer under (b)(1)(iv). Under this clause, the Government retains accountability for, and title to, the property, and the Contractor shall comply with the following:

NASA Procedural Requirements (NPR) 4100.1, NASA Materials Inventory Management Manual;

NASA Procedural Requirements (NPR) 4200.1, NASA Equipment Management Procedural Requirements;

NASA Procedural Requirement (NPR) 4300.1, NASA Personal Property Disposal Procedural Requirements;

N/A

Property not recorded in NASA property systems must be managed in accordance with the requirements of the clause at FAR 52.245-1, as incorporated in this contract.

The Contractor shall establish and adhere to a system of written procedures to assure continued, effective management control and compliance with these user responsibilities. In accordance with FAR 52.245-1(h)(1) the contractor shall be liable for property lost, damaged,

destroyed or stolen by the contractor or their employees when determined responsible by a NASA Property Survey Board, in accordance with the NASA guidance in this clause.

(b)(1) The official accountable recordkeeping, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished within NASA management information systems prescribed by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the Contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The Contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area.

(ii) The Contractor shall furnish a copy of each purchase order, prior to delivery by the vendor, to the installation central receiving area.

(iii) The Contractor shall establish a record for Government titled property as required by FAR 52.245-1, as incorporated in this contract, and shall maintain that record until accountability is accepted by the Government.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use requires advance approval of the Contracting Officer and notification of the Industrial Property Officer. The property shall be considered Government furnished and the Contractor shall assume accountability and financial reporting responsibility. The Contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR 52.245-1, Government Property (as incorporated in this contract), until its return to the installation. NASA Procedural Requirements related to property loans shall not apply to offsite use of property by contractors.

(2) After transfer of accountability to the Government, the Contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) of this clause and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the Contracting Officer.

(c) The following property and services are provided if checked:

[] (1) Office space, work area space, and utilities. Government telephones are available for official purposes only.

[] (2) Office furniture.

[] (3) Property listed in not applicable

(i) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records.

(ii) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

[] (4) Supplies from stores stock.

[] (5) Publications and blank forms stocked by the installation.

[] (6) Safety and fire protection for Contractor personnel and facilities.

[] (7) Installation service facilities: none at this time

[] (8) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

[] (9) Cafeteria privileges for Contractor employees during normal operating hours.

[] (10) Building maintenance for facilities occupied by Contractor personnel.

[] (11) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services may be provided on-site, as approved by the Contracting Officer.

(End of clause)

1852.245-73 FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2017)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Industrial Property Officer and a copy to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: MSFC IPO , unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c)(1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31st. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31st.

(2) Some activity may be estimated for the month in which the report is submitted, if necessary, to ensure the NF 1018 is received when due. However, contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533) Contractor Financial Management Report) cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss corrective action.

(3) In addition to an annual report, if at any time during performance of the contract, NASA-owned property in the custody of the Contractor has a value of $10 million or more, the Contractor shall also submit a report no later than the 21st of each month in accordance with the requirements of paragraph (c)(2) of this clause.

(4) The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly report in accordance with (c)(3) of this clause, and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of clause)

1852.245-75 PROPERTY MANAGEMENT CHANGES (JAN 2011)

1852.245-76 LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245-1 (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment J-1 SOW of this contract on a no charge-for-use basis pursuant to the clause at FAR 52.245-1, Government Property, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at locations in accordance with NASA agreements , and at other location(s) as may be approved by the Contracting Officer. Under FAR 52.245-1, the Contractor is accountable for the identified property.

(End of clause)

1852.245-78 PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (AUG 2015)

1852.245-82 OCCUPANCY MANAGEMENT REQUIREMENTS (SEP 2017)

(a) In addition to the requirements of the clause at FAR 52.245-1, Government Property, as included in this contract, the Contractor shall comply with the following in performance of work in and around Government real property:

(1) NPD 8800.14, Policy for Real Estate Management.

(2) NPR 8831.2, Facilities Maintenance and Operations Management.

N/A

(b) The Contractor shall obtain the written approval of the Contracting Officer before installing or removing Contractor-owned property onto or into any Government real property or when movement of Contractor-owned property may damage or destroy Government-owned property. The Contractor shall restore damaged property to its original condition at the Contractor's expense.

(c) The Contractor shall not acquire, construct or install any fixed improvement or structural alterations in Government buildings or other real property without the advance, written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. Title to such property shall vest in the Government.

(d) The Contractor shall report any real property or any portion thereof when it is no longer required for performance under the contract, as directed by the Contracting Officer.

(End of clause)

MSFC 52.204-91 SECURITY AND BADGING REQUIREMENTS (NOV 2016)

Performance of this contract will require access to facilities, information technology systems, and other resources at the Marshall Space Flight Center and/or the Michoud Assembly Facility. To obtain and maintain access, the Contractor shall comply with the applicable requirements from the latest revision of (1) NASA Procedural Requirements (NPR) 1600.1, "NASA Security Program Procedural Requirements," (2) NPR 1600.4, "Identity and Credential Management," (3) Marshall Procedural Requirements (MPR) 1600.1, "MSFC Security Program Procedural Requirements," (4) MPR 1600.4, "MSFC Identity, Credential, and Access Management," and (5) NASA Advisory Implementing Instruction (NAII) 1600.4, "Foreign National Access Management."

(End of clause)

SECTION H - SPECIAL CONTRACT REQUIREMENTS

1852.223-70 SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall maintain an effective worksite safety and health program with organized and systematic methods to—

(1) Comply with Federal, State, and local safety and occupational health laws and with the safety and occupational health requirements of this contract;

(2) Describe and assign the responsibilities of managers, supervisors, and employees;

(3) Inspect regularly for and identify, evaluate, prevent, and control hazards;

(4) Orient and train employees to eliminate or avoid hazards; and

(5) Periodically review the program's effectiveness.

Authorized Government representatives shall have access to and the right to examine the work site and related records under this Contract in order to determine the adequacy of the Contractor's safety and occupational health measures.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify the Contracting Officer or a designee any Type A, B, C, or D Mishap, or close calls as defined in NASA Procedural Requirement (NPR) 8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall cooperate with any Government-authorized investigation of Type A, B, C, or D Mishaps, or Close Calls reported pursuant to paragraph (d) of this clause by providing access to employees; and relevant information in the possession of the Contractor regarding the mishap or close call.

(f)(1) The Contracting Officer may notify the Contractor of any noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer will notify the Contractor orally, with written confirmation. The Contractor shall promptly take any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may—

(i) Invoke the stop-work order clause in this contract;

(ii) Require the Contractor to remove and replace Contractor or subcontractor personnel who fail to comply with or violate applicable requirements of this clause;

(iii) Record the Contractor's failure to comply in the appropriate databases of past performance; and

(iv) Consider the Contractor's failure to comply in any responsibility determination or evaluation of past performance.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g) in all subcontracts above the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

(End of clause)

1852.223-72 SAFETY AND HEALTH (SHORT FORM) (JUL 2015)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA is committed to protecting the safety and health of the public, our team members, and those assets that the Nation entrusts to the Agency.

(b) The Contractor shall have a documented, comprehensive and effective health and safety program with a proactive process to identify, assess, and control hazards and take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c) in subcontracts that exceed the simplified acquisition threshold where work will be conducted completely or partly on Federally-controlled facilities.

(End of clause)

1852.223-75 MAJOR BREACH OF SAFETY OR SECURITY (FEB 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

1852.225-70 EXPORT LICENSES (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, and the Export Administration Regulations (EAR), 15 CFR parts 730-799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be

responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at NASA Installations, where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012)
(DEVIATED)

This ISS Cross Waiver is applicable to the civil lunar Gateway (including all Artemis) contracts, which is considered an evolutionary capability of the ISS pursuant to Article 14 of the IGA.

(a) The Intergovernmental Agreement for the International Space Station ("ISS") (hereinafter, the "IGA") contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS and any addition of evolutionary capabilities utilizing Article 14 of the IGA, including the civil lunar Gateway (the "Gateway"). The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.

(b) As used in this clause and for purposes of this Contract, the term:
(1) "Agreement" refers to any NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(2) "Damage" means:
(i) Bodily injury to, or other impairment of health of, or death of, any person;
(ii) Damage to, loss of, or loss of use of any property;
(iii) Loss of revenue or profits; or
(iv) Other direct, indirect, or consequential Damage.

(3) "Launch" means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:
(i) in a suborbital trajectory;
(ii) in Earth orbit in outer space;
(iii) in lunar orbit; or

(iv) otherwise in outer space,
(v) including Launch Services activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(4) “Launch Services” means:
(i) Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and
(ii) The conduct of a Launch.

(5) “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(6) “Partner State” includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, The Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor Agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.

(7) “Party” means a party to an Agreement involving activities in connection with the Gateway, including the Parties to this Contract.

(8) “Payload” means all property to be flown or used on or in a Launch Vehicle, Transfer Vehicle, and/or the Gateway and element(s) thereof.

(9) “Protected Space Operations” means all Launch or Transfer Vehicle activities, Gateway activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA’s obligations under these Agreements. It includes, but is not limited to:
(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the Gateway, Payloads, or instruments, as well as related support equipment and facilities and services; and
(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. “Protected Space Operations” also includes all activities related to evolution of the ISS (which includes Gateway), as provided for in Article 14 of the IGA. “Protected Space Operations” excludes activities on Earth which are conducted on return from the Gateway to develop further a Payload's product or process for use other than for Gateway-related activities in implementation of the IGA.

(10) “Reentry” means to purposefully return or attempt to return, through completion of recovery, a Transfer Vehicle, Payload, or crew from the Gateway, Earth orbit, or outer space to Earth.

(11) "Reentry Services" means:
(i) Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and
(ii) The conduct of a Reentry through completion of recovery.

(12) "Related Entity" means:
(i) A contractor or subcontractor of a Party or a Partner State at any tier;
(ii) A user or customer of a Party or a Partner State at any tier; or
(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms "contractor" and "subcontractor" include suppliers of any kind.

(13) "Space Station" means the International Space Station, and any additional evolutionary capabilities made pursuant to Article 14 of the IGA, including the civil lunar Gateway.

(14) "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:
(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:
(i) A Party as defined in (b)(7) of this clause;
(ii) A Partner State, including the United States of America;
(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or
(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause, to its Related Entities by requiring them, by contract or otherwise, to:
(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and
(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the

Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:
(i) Claims between the Contractor and its own Related Entities or between its Related Entities;
(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
(iii) Claims for Damage caused by willful misconduct;
(iv) Intellectual property claims;
(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;
(vi) Claims by the Government arising out of or relating to the contractor's failure to perform its obligations under this Contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(d) Waiver of claims Between the Government and Contractor:

(1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor's insurance or financial capability required under paragraph (f) below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this Contract.

(2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities.

(e) If the Contractor is required to obtain a Federal Aviation Administration (FAA) license in accordance with 51 U.S.C. 50901 et seq., for all Launch Services and Reentry Services performed under this Contract, this waiver of claims shall not be applicable to activities under this Contract that are subject to the FAA license. This waiver of claims shall cover all other activities performed under this Contract.

(f) Throughout the performance of the contract, the Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damages (as defined in paragraph (b)(2)(ii)) to U.S. Government property, except for:
(i) damage to Gateway element(s) on-orbit;
(ii) damage or loss resulting from the willful misconduct of the Government or its employees; and

(iii) damage to U.S. Government property that is otherwise covered pursuant to insurance required for FAA licensing.

For the avoidance of doubt, for obligations within this (f) clause, the Contractor is not required to obtain insurance or demonstrate financial capability for any damages caused to the Gateway element(s) that occur on orbit during performance of this Contract.
Such insurance shall be an amount up to $100 million, or the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of $100 million. The Contractor shall provide acceptable evidence of the insurance or financial capability to the Contracting Officer, subject to Contracting Officer approval. Insurance policies shall name the United States Government as an additional insured party. Once approved by the Contracting Officer, insurance policies may not be modified or canceled without the prior, written approval of the Contracting Officer. In the event any losses or damages are covered by such insurance, the Government may, at its discretion, request that insurance proceeds be applied directly to the repair or replacement of such damage or loss, rather than paid directly to the Government. The Government may request that all insurance proceeds be made payable directly to the party making the repairs or providing a replacement. Such repair or replacement shall be to the satisfaction of the Contracting Officer. If losses or damages exceed available insurance, the Government shall have the right to prioritize the application of insurance proceeds.

(End of Clause)

1852.228-78 CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (OCT 2012)
(DEVIATED)

(a) *Applicability.* The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities that are not related to the International Space Station (ISS) or Gateway but involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) *Definitions.* As used in this clause, the term:

(1) “Agreement” refers to any contract or NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR Part 1266.104.

(2) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) “Launch” means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:

(i) in a suborbital trajectory;

(ii) in Earth orbit in outer space;

(iii) in lunar orbit; or

(iv) otherwise in outer space,

(v) including Launch Services activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(4) “Launch Services” means:

(i) Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and

(ii) The conduct of a Launch.

(5) “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(6) "Party" means a party to an Agreement involving activities in connection with the Artemis program, including the Parties to this contract.

(7) "Payload" means all property to be flown or used on or in a Launch Vehicle, Transfer Vehicle, and/or Orion and element(s) thereof.

(8) "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities unrelated to the ISS or Gateway that involves a launch.

(i) Protected Space Operations includes, but is not limited to:

(A) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(B) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

(ii) Protected Space Operations excludes:

(A) Activities on Earth which are conducted on return from space to develop further a payload's product or process other than for the activities within the scope of an Agreement; and

(B) Activities on the lunar surface.

(9) “Reentry” means to purposefully return or attempt to return, through completion of recovery, a Transfer Vehicle, Payload, or crew from the Gateway, Earth orbit, or outer space to Earth.

(10) “Reentry Services” means:

(i) Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and

(ii) The conduct of a Reentry through completion of recovery.

(11) "Related entity" means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. The terms "contractors" and "subcontractors" include suppliers of any kind.

(12) “Transfer Vehicle” means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) *Cross-waiver of liability.*

(1) The Contractor agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by

virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against—

(i) A Party;

(ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;

(iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, entered into force on 1 September 1972, in which the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Contractor and its own Related Entities or between its Related Entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(d) *Waiver of claims between the Government and Contractor.*

(1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor's insurance or financial capability as required under paragraph (e), below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this contract.

(2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities.

(e) *Insurance and financial capability requirements.*

(i) Throughout the performance of the contract, the Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damage to U.S. Government property, except for:

(A) Damage to Orion on-orbit;

(B) Damage or loss resulting from the willful misconduct of the Government or its employees; or

(C) Damage to U.S. Government property that is otherwise covered pursuant to the insurance required for FAA licensing.

(ii) The insurance required by paragraph (e)(i) shall be in the amount of $100 million, or a lesser amount that is the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of $100 million.

(iii) Insurance policies shall name the United States Government as an additional insured party.

(iv) The Contractor shall provide evidence of the insurance or financial capability to the Contracting Officer upon request, and such insurance or financial capability is subject to Contracting Officer approval. Once approved by the Contracting Officer, the Contractor

shall not modify or cancel the insurance policy without the prior, written approval of the Contracting Officer.

(v) In the event any losses or damages are covered by insurance, the Government may, at its discretion, request that insurance proceeds be applied directly to the repair or replacement of such damage or loss, rather than paid directly to the Government. The Government may request that all insurance proceeds be made payable directly to the party making the repairs or providing a replacement. Such repair or replacement shall be to the satisfaction of the Contracting Officer. If losses or damages exceed available insurance, the Government shall have the right to prioritize the application of insurance proceeds.

(f) *Exclusion for FAA-licensed activities.* If the Contractor is required to obtain a Federal Aviation Administration (FAA) license in accordance with 51 U.S.C. 50901 et seq., for any Launch Services or Reentry Services performed under this contract, this waiver of claims shall not be applicable to activities under this contract that are subject to the FAA license.

(g) *Basis for a claim or suit.* Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

1852.232-77 LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items 0001 through 0010, the sum of $537,610,916.24 is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date	Amounts
TBD	$2,493,845,005

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the

contrary in the Termination for Convenience of the Government clause notwithstanding.

(c)(1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until January 31, 2022.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs

(f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3)(i) The notice shall state the estimate when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional

costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) of this clause. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.235-73 FINAL SCIENTIFIC AND TECHNICAL REPORTS (DEC 2006) ALTERNATE II (DEC 2005)

(a) The Contractor shall submit to the Contracting Officer a final report that summarizes the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(b) The final report shall be of a quality suitable for publication and shall follow the formatting and stylistic guidelines contained in NPR 2200.2, Requirements for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information. Electronic formats for submission of reports should be used to the maximum extent practical. Before electronically submitting reports containing scientific and technical information (STI) that is export-controlled or limited or restricted, contact the Contracting Officer to determine the requirements to electronically transmit these forms of STI. If appropriate electronic safeguards are not available at the time of submission, a paper copy or a CD-ROM of the report shall be required. Information regarding appropriate electronic formats for final reports is available at *http://www.sti.nasa.gov* under “Publish STI—Electronic File Formats.”

(c) The last page of the final report shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) In addition to the final report submitted to the Contracting Officer, the Contractor shall concurrently provide to the Center STI/Publication Manager and the NASA Center for AeroSpace Information (CASI) a copy of the letter transmitting the final report to the Contracting Officer. The copy of the letter shall be submitted to CASI at the address listed at *http://www.sti.nasa.gov* under the "Get Help" link.

(e) Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; or, to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Contractor shall not publish, release, or otherwise disseminate, except to NASA, data produced during the performance of this contract, including data contained in the final report and any additional reports required by 1852.235-74 when included in the contract, without prior review by NASA. Should the Contractor seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Contractor may do so once NASA has completed its document availability authorization review and the availability of the data has been determined.

(f) All publications of any material based on or developed under NASA sponsored projects shall include an acknowledgement similar to the following:

"The material is based upon work supported by the National Aeronautics and Space Administration under Contract Number XXXX."

Except for articles or papers published in scientific, technical or professional journals, the exposition of results from NASA supported research shall also include the following disclaimer:

"Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration."

(End of clause)

1852.235-74 ADDITIONAL REPORTS OF WORK—RESEARCH AND DEVELOPMENT (FEB 2003)

In addition to the final report required under this contract, the Contractor shall submit the following report(s) to the Contracting Officer:

(a) Monthly progress reports. The Contractor shall submit separate monthly reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, brief, and informal. They shall include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period.

(b) Quarterly progress reports. The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(c) Submission dates. Monthly and quarterly reports shall be submitted by the 15th day of the month following the month or quarter being reported. If the contract is awarded beyond the middle of a month, the first monthly report shall cover the period from award until the end of the following month. No monthly report need be submitted for the third month of contract effort for which a quarterly report is required. No quarterly report need be submitted for the final three months of contract effort since that period will be covered in the final report. The final report shall be submitted within 15 days after the completion of the effort under the contract.

(End of clause)

1852.242-72 DENIED ACCESS TO NASA FACILITIES (OCT 2015)

(a)(1) The performance of this contract requires contractor employees of the prime contractor or any subcontractor, affiliate, partner, joint venture, or team member with which the contractor is associated, including consultants engaged by any of these entities, to have access to, physical entry into, and to the extent authorized, mobility within, a NASA facility.

(2) NASA may close and or deny contractor access to a NASA facility for a portion of a business day or longer due to any one of the following events:

(i) Federal public holidays for federal employees in accordance with 5 U.S.C. 6103.

(ii) Fires, floods, earthquakes, unusually severe weather to include snow storms, tornadoes and hurricanes.

(iii) Occupational safety or health hazards.

(iv) Non-appropriation of funds by Congress.

(v) Any other reason.

(3) In such events, the contractor employees may be denied access to a NASA facility, in part or in whole, to perform work required by the contract. Contractor personnel already present at a NASA facility during such events may be required to leave the facility.

(b) In all instances where contractor employees are denied access or required to vacate a NASA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will

provide direction to the contractor, which could include continuing on-site performance during the NASA facility closure period. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, that the NASA facility is accessible. Once accessible the contractor shall resume contract performance as required by the contract.

(d) For the period that NASA facilities were not accessible to contractor employees, the contracting officer may—

(1) Adjust the contract performance or delivery schedule for a period equivalent to the period the NASA facility was not accessible;

(2) Forego the work;

(3) Reschedule the work by mutual agreement of the parties; or

(4) Consider properly documented requests for equitable adjustment, claim, or any other remedy pursuant to the terms and conditions of the contract.

(e) Notification procedures of a NASA facility closure, including contractor denial of access, as follows:

(1) The contractor shall be responsible for monitoring the local radio, television stations, NASA Web sites, other communications channels, for example contracting officer notification, for announcement of a NASA facility closure to include denial of access to the NASA facility. The contractor shall be responsible for notification of its employees of the NASA facility closure to include denial of access to the NASA facility. The dismissal of NASA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NASA facility closure in which contractor employees are denied access. Moreover, the leave status of NASA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NASA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.

(2) NASA's Emergency Notification System (ENS). ENS is a NASA-wide Emergency Notification and Accountability System that provides NASA the ability to send messages, both Agency-related and/or Center-related, in the event of an emergency or emerging situation at a NASA facility. Notification is provided via multiple communication devices, *e.g.* Email, text, cellular, home/office numbers. The ENS provides the capability to respond to notifications and provide the safety status. Contractor employees may register

for these notifications at the ENS Web site:
http://www.hq.nasa.gov/office/ops/nasaonly/ENSinformation.html.

(End of clause)

1852.244-70 GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

1852.247-71 PROTECTION OF THE FLORIDA MANATEE (JUN 2018)

MSFC 52.209-92 DISCLOSURE OF ORGANIZATIONAL CONFLICT OF INTEREST (OCI) AFTER CONTRACT AWARD (MAY 2017)

(a) If the Contractor identifies an actual or potential organizational conflict of interest that has not already been adequately disclosed and resolved (or waived in accordance with FAR 9.503), the Contractor shall make a prompt and full disclosure in writing to the Contracting Officer. This disclosure shall include a description of the action the Contractor has taken or proposes to take in order or resolve the conflict. This reporting requirement also includes subcontractors' actual or potential organizational conflicts of interest not adequately disclosed and resolved prior to award.

(b) Organizational Conflict of Interest Plan. If there is an OCI plan in the contract, the Contractor shall periodically update the plan, based on changes such as changes to the legal entity, the overall structure of the organization, subcontractor arrangements, contractor management, ownership, ownership relationships or modification of the work scope.

(End of clause)

MSFC 52.209-94 RESOLUTION OF ORGANIZATIONAL CONFLICTS OF INTEREST (MAY 2017)

(a) The Organizational Conflict of Interest (OCI) Plan and its obligations (which includes any appended resolution strategies related to identified OCIs), are hereby incorporated in the contract by reference.

(b) Changes. (1) Either the Contractor or the Government may propose changes to the OCI Plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporating the change into the plan by contract amendment.

(2) In the event that the Government and the Contractor cannot agree upon a mutually acceptable change, the Government reserves the right to make a unilateral change to the OCI Plan as necessary, with the approval of the head of the contracting activity, subject to Contractor appeal as provided in the Disputes clause.

(c) Violation. The Contractor shall report any violation of the OCI Plan, whether by its own personnel or those of the Government or other contractors, to the Contracting Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. After conducting such further inquiries and discussions as may be necessary, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct corrective action.

(d) Breach. Any breach of the above restrictions or any nondisclosure or misrepresentation of any relevant facts required regarding OCI to be disclosed may result in termination of this contract for default or other remedies as may be available under law or regulation.

(e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts where the work includes or may include tasks related to the OCI. The terms "Contractor" and "Contracting Officer" shall be appropriately modified to reflect the change in parties and to preserve the Government's rights.

(End of clause)

MSFC 52.223-90 ASBESTOS MATERIAL (AUG 2015)

During performance of this contract, Contractor personnel performing work in MSFC buildings may come in contact with materials containing asbestos. MSFC Buildings 4200, 4201, and 4663 are of special concern since they are known to contain a sprayed on fire insulation on or above the ceiling, usually located on the metal or concrete structure of the buildings. Examples of asbestos-containing material are floor tile, pipe and lagging insulation, exterior siding, roofing felt, and many other building materials. To facilitate communication, MSFC has established a website where the inventory of asbestos-containing material, their condition and approximate location are provided. The URL for this website is http://ais.ndc.nasa.gov/default.aspx. If the Contractor is unable to access this URL, they may contact the Contracting Officer or MSFC's Environmental Engineering and Occupational Health (EEOH) Office (organization code AS10) for assistance. Prior to performing tasks which may disturb building material containing asbestos or suspected asbestos, the Contractor shall notify MSFC's EEOH Office for assistance. The Contractor shall also be responsible for ensuring that all Contractor personnel working onsite are made aware of and comply with the requirements of this clause.

(End of clause)

MSFC 52.223-91 HAZARDOUS MATERIAL REPORTING (FEB 2016)

(a) If during the performance of this contract, the Contractor transports or accepts delivery of any hazardous materials (hazardous as defined under the latest version of Federal Standard No. 313, including revisions adopted during the term of the contract) on-site to Marshall Space Flight Center, the hazardous material shall be processed through MSFC Central Receiving to be bar-coded for inventory. Alternative receiving points may be designated if approval is granted in accordance with MWI 8550.5, "Hazardous Material Management." Chemical containers shall be managed in accordance with the provisions of MWI 8550.5. The Contractor shall be responsible for ensuring that all Contractor/subcontractor personnel are made aware of and comply with this clause.

(b) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material; or with clauses regarding hazardous materials, which may be contained in the contract and/or order.

(End of clause)

MSFC 52.223-92 ENVIRONMENTAL - GENERAL CLAUSE (AUG 2010)

Contractors performing on-site shall comply with all applicable Environmental policies and procedures including, but not limited to, MPD 8500.1, "MSFC Environmental Management Policy" and MPR 8500.1, "MSFC Environmental Engineering and Occupational Health Program." MSFC contractors performing on-site activities that could potentially impact the environment shall be responsible for following all established NASA/MSFC environmental procedures. These procedures and other applicable policies and procedures are available by contacting the NASA/MSFC Environmental Engineering & Occupational Health Office. Failure to comply with environmental policies and procedures, may result in damage to the environment, and could potentially result in regulatory penalties against NASA and/or the Contractor, and Contractor loss of access to NASA/MSFC facilities.

(End of clause)

MSFC 52.223-96 MEDICAL SERVICES (SEP 2018)

Contractors with employees requiring NASA-specific and Occupational Health and Safety Association (OSHA) required medical certification health examinations may utilize the MSFC Medical Center's service provider for such services; however, the Contractor is responsible for all associated costs and payments. The MSFC Medical Center's service provider is located in Building 4249 and is generally open between 7:00 a.m. and 4:30 p.m., Monday through Thursday and 7:00 a.m. to 3:30 p.m. every other Friday (excluding Government holidays, Center-approved closures, early dismissals, or delayed openings), coinciding with the MSFC flexible work schedule. Contractors should utilize the MSFC emergency medical services system

for any incident that occurs at MSFC and which requires emergency medical treatment by dialing 911. Additional emergency contact numbers are accessible from the MSFC "Safety, Health and Environmental - SHE" Web site located on the ExplorNet Web page https://explornet.msfc.nasa.gov/groups/safety-health-and-environmental-she. Refer to MWI 1800.1, "MSFC Occupational Medicine" and MWI 3410.1, "Personnel Certification Program" for additional information.

(End of clause)

GOVERNMENT INSIGHT

(a) *Applicability.* This clause describes the primary working-level mechanism for contract performance monitoring by the Government.

(b) *Definitions.* As used in this clause only, the following definitions apply.

(1) "Active-Active docking adapter (AADA)" means the system to be developed by the Contractor and delivered and attached to Gateway if the Contractor intends to dock its Integrated Lander (or any element thereof) to Gateway in performance of its crewed demonstration mission and which NASA will take ownership of upon delivery to Gateway. The Active-Active docking adaptor is considered part of Gateway when integrated with Gateway, and part of the contractor's Integrated Lander when crew are present and the contractor's Integrated Lander is not docked to Gateway.

(2) "HLS" means all objects, vehicles, elements, integrated systems, systems, subsystems, or components thereof that are designed, developed, and utilized by the contractor, its teammates, subcontractors, and suppliers in performance of this contract, and which collectively comprise the contractor's Integrated Lander (or elements thereof), all Supporting Spacecraft, all launch vehicles necessary for launch and delivery of the contractor's Integrated Lander (or elements thereof) and its Supporting Spacecraft, and the contractor's Active-Active docking adapter (if required for performance of the contractor's crewed demonstration mission).

(3) "Insight" means the Government gaining an understanding of the Contractor's activities and data, including an understanding of those activities necessary to assess technical progress, schedule performance, and how the Contractor is managing risks while successfully completing contract requirements and achieving final NASA certification. Insight is not approval or disapproval authority, but insight may provide information for the Government to use in, and expedite, approval procedures otherwise contemplated by this contract.

(4) “Integrated Lander” means any and all combinations or configurations of the contractor’s elements (e.g., the Ascent Element) which are integrated (or, alternatively, a single element achieving the same purpose) at any time when crew are onboard.

(5) “Launch Vehicle” means any object, vehicle, or system, subsystem, or component thereof that is intended for launch, launched from Earth, or returning to Earth, and which carries any payload necessary for the Contractor to execute its demonstration mission or any portion thereof in performance of this contract.

(6) “Safety critical” means a condition, event, operation, process, function, equipment or system (including software and firmware) with potential for personnel injury or loss, or with potential for loss or damage to vehicles, equipment or facilities, loss or excessive degradation of the function of critical equipment, or which is necessary to control a hazard.

(7) “Supporting Spacecraft” means any contractor spacecraft that is not otherwise the contractor’s Integrated Lander (or an element thereof), launch vehicle, or Active-Active docking adapter (if required), but that is otherwise required for the contractor to execute its demonstration mission or any portion thereof in performance of this contract, including, but not limited to, rendezvous, proximity operations, docking and undocking (RPODU), propellant transfer, and orbital maneuvering and transfer.

(c) *Areas open to insight*. Except for related financial information, the Contractor shall provide NASA real-time, or otherwise timely as appropriate to respond to a request from NASA, insight into:

(1) Any aspect of the design, development, analysis, testing, schedules, performance metrics, risks, and management processes of its HLS and individual vehicles, elements, integrated systems, systems, subsystems, or components thereof, including every aspect of the Integrated Lander, all Supporting Spacecraft, and if applicable, any AADA;

(2) Launch vehicles and launch site operations including, but not limited to, spacecraft-to-launch vehicle integration, spacecraft handling procedures, launch commit criteria, and range safety analysis supporting the launch of the Contractor’s HLS, any Supporting Spacecraft, and all payloads used by the Contractor during the performance of this contract, including non-NASA payloads or cargo (see the *Non-NASA Cargo, Payloads, and Services* clause);

(3) HLS flight and mission operations, including preparations, flight plans, rules, and procedures, trajectory and mission design, crew and flight control team training, real-time

operations, space communications and navigation networks, and any non-NASA services performed by the Contractor (see the *Non-NASA Cargo, Payloads, and Services* clause); and

(4) Any other contract performance activities or data identified by NASA that are mission-critical or otherwise related to safety in any manner.

(d) *NASA Insight Team*.

(1) The Contractor shall provide insight to NASA personnel and support services contractor(s) from the following NASA program offices: Artemis, Gateway, Exploration Systems Development, and Launch Services Program. NASA will inform the Contractor of the individual(s) within NASA who are the insight designee(s) for this contract (collectively, the "NASA Insight Team"), who are subject to change at any time at NASA's sole discretion.

(2) The NASA Insight Team is not authorized on behalf of the Government to direct Contractor performance, execute major or minor contract modifications, or otherwise provide direction on contractual requirements or contract interpretation. Any action(s) taken by the Contractor in response to direction given by any person other than the Contracting Officer or his/her authorized designees shall be entirely at the Contractor's own risk. The Contractor shall immediately notify the Contracting Officer of any alleged contract changes.

(e) *Insight procedures.*

(1) *Access*. The Contractor shall provide NASA and its support services contractor(s) access to all data and activities necessary for the Government to achieve insight into the areas identified in paragraph (c). At a minimum, access is the ability, both remotely and on-site at the Contractor's facilities, to locate and review all data and activities.

(2) *Possession and transformation of data*. The Contractor shall permit, and when requested, facilitate the Government in downloading or otherwise taking possession (e.g., printing) of data subject to insight. The Government may store such data on Government systems or at Government facilities and transform the data as deemed necessary by the Government to effectuate insight.

(3) *Contractor facilitator team.* The Contractor shall establish a team of Contractor personnel to help facilitate the Government's insight, including facilitating physical and/or virtual access to data and Contractor activities.

(4) *Accommodations at Contractor facilities.* NASA may elect to have representation by Government personnel and/or NASA's support services contractor(s) performing insight activities as a resident office at the Contractor's facilities for the life of the contract. In such scenarios, the Contractor, in accordance with the Contractor's Insight Implementation Plan, shall provide reasonable accommodations and services, such as badging, furniture, telephones, internet access, and use of easily accessible scanners, printers and copy machines at each location.

Electronic data transfer compatibility between the resident office and off-site NASA institutions is required, as well as remote access for select NASA personnel at NASA centers to Contractor databases where electronic files are posted and revisions maintained.

(5) *RBA*. The Contractor shall facilitate members of the NASA Insight Team participating in quality assurance functions for all safety-critical items/processes/products identified by a risk-based analysis (RBA). A RBA is an iterative analysis based on a comprehensive understanding of the design, development, testing, critical manufacturing/assembly processes, and operations used to identify areas of risk. The Contractor shall support the RBA, by providing technical expertise, as required.

(f) *Contractor notification requirements.*

(1) The Contractor shall notify the NASA Insight Team sufficiently in advance of technical meetings, control boards, reviews, tests, and any other areas identified for Government Quality Assurance associated with certification to permit meaningful Government participation in the subject event.

(2) The Contractor shall notify NASA of qualification or test anomalies involving similar vehicles, systems, subassemblies and components. The Contractor shall make available to NASA all problem reports or discrepancy reports on vehicle systems' failures and anomalies. This shall include insight into fleet-wide problems, anomalies, Material Review Board actions, deviations or waivers to systems, subsystems, materials, processes, and test equipment including those used on non-NASA missions.

(3) In the event of an anomaly, launch or mission failure, the Contractor shall support NASA's mishap investigation in accordance with NFS 1852.223-70 SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015), incorporated herein, and the other terms and conditions set forth in this contract, or shall allow NASA to fully participate in the Contractor's Mishap Investigation Board or equivalent entity, including those for non-NASA missions that utilize the same space transportation vehicles (as defined in the contract section H clause, "Domestic Source Requirements") developed or utilized under this contract.

(g) *Effects of insight.*

(1) Insight should result in an effective working relationship between the Government and the Contractor leading to a NASA certification of the Contractor's Integrated Lander.

(2) If, through insight, the NASA Insight Team observes any of the following: Contractor non-compliance with requirements or the other terms and conditions of the contract; a difference in interpretation of test results; or disagreement with the Contractor's technical approach, the NASA Insight Team will elevate the issue through the appropriate HLS boards. Through an effective, functioning relationship, the Government and Contractor should strive to resolve issues at the lowest working level and minimize issues elevated to program boards. Program boards will disposition recommendations in a timely manner and provide oversight resolution if necessary. Resulting board decisions and direction will be transmitted to the Contractor through the Contracting Officer. If disposition results in a requirement change, the contract changes clause shall govern. If the Contractor and Contracting Officer disagree on whether the board disposition provided is within the requirements of the contract, the contract disputes clause will govern.

(3) The parties agree that information obtained through insight does not constitute notice, actual or constructive, for any purpose.

(4) Insight does not affect or modify in any way the Government's right to pursue remedies for nonconforming services or work.

(5) Insight does not affect or modify the Contractor's responsibility for full performance as set forth in this contract. The Government's insight under this clause shall not be construed as: authorization; endorsement or approval of milestones; certification or final acceptance or rejection of certification success; or as a defense to any finding of mission failure or final acceptance or rejection of contract deliverables.

(h) *Government use and handling of insight data.*

(1) The data generated as a result of Government insight may be used, modified, reproduced, released, performed, displayed, or disclosed within the Government and its support service contractors. The Government may not, without written permission of the Contractor, release or disclose the data outside the Government, except as otherwise required by law, use the technical data for manufacture, or authorize the technical data to be used by a party outside the Government. Data accessed or obtained by the Government under this clause is not subject to the licensing provisions or other terms and conditions pertaining to technical data and computer software established in FAR 52.227-14 Rights in General –

Deviated as incorporated into this contract. The Government's right to use data accessed or obtained by the Government pursuant to this clause is limited to the terms and conditions of this clause.

(2) The Trade Secrets Act (18 U.S.C. § 1905) prohibits NASA personnel from disclosing the Contractor's proprietary information unless authorized by law to do so. NASA will undertake all necessary precautions in order to ensure that Contractor confidential or proprietary information is protected throughout contract performance.

(i) *Flow down to subcontractors and suppliers.* The Contractor shall ensure the Government has insight into the activities and data of: (1) the Contractor; and (2) all subcontractors and suppliers performing or supporting any safety critical work, or handling or creating data required to certify any portion of the HLS. Fulfillment of this clause may require the Contractor to execute third-party data rights agreements with its suppliers, as well as rights to information developed under other programs, to provide adequate NASA insight on parts and services procured by the Contractor. The Contractor shall incorporate the applicable provisions of this clause into its contracts with subcontractors and suppliers to which this clause applies, or shall otherwise obtain signed commitments to comply with the terms of this clause and related contract requirements from those entities.

(j) *Insight Implementation Plan.* The Contractor's Insight Implementation Plan shall comply with the requirements of this clause and specify, in detail, how the Contractor will accomplish the requirements of this clause. Where the plan and this clause conflict, this clause shall govern.

(End of Clause)

USE OF GOVERNMENT RESOURCES

(a) *General*.

(1) *Applicability*. While the majority of work to be completed under this contract shall be performed at Contractor or subcontractor facilities, and the responsibility for adequately staffing this contract and completing full contract performance resides solely with the Contractor, the Contractor may request the use of certain specified Government resources in accordance with this clause. This clause applies to the Contractor's use of those Government resources, including property, facilities, assets, or services, whether obtained from NASA or another Government Agency; it does not apply to Government-furnished property (GFP) otherwise provided under this contract.

(2) *Role of Technical Manager.* A "Technical Manager" is an individual designated

and authorized by the Contracting Officer to interact with the Contractor on behalf of the Government to perform the day-to-day management of the Government resources specified in paragraphs (b)(1)(i) and (ii) of this clause.

(b) *Use of NASA resources*.

(1) Types of resources.

(i) *NASA on-site resources.* The Contractor may propose to perform a portion of the work required under this contract using the property, facilities, assets, services, or other specialized resources uniquely available on-site ("on-site resources") from a NASA Center, Component Facility, or the Jet Propulsion Laboratory (JPL) (any one of which is a "Performing Organization" hereafter in this clause). Such proposed requests must be within the scope of the contract and are subject to the availability of those resources and the Performing Organization's ability and willingness to provide them. The Contractor shall limit requests for the use of on-site resources to only those Performing Organization facilities, services, or other resources that are unique or not otherwise reasonably available commercially. The parties shall use a Government Task Agreement (GTA) to document the on-site resources that will be utilized by the Contractor, and any special terms and conditions that apply to the Contractor's use of those resources. The Contractor shall follow the instructions for use of GTAs as provided in solicitation Attachment Q – Government Task Agreements.

(A) *GTAs submitted with proposal.* The Performing Organization will provide a cost for each GTA. For GTAs submitted with proposal, the Contractor shall not include this cost in its firm fixed price. The Government will add the total cost of all GTAs to the Offeror's Total Evaluated Price for proposal evaluation purposes only.

(B) *GTAs requested anew during contract performance.* During contract performance, the Parties may agree to execute additional GTAs if they mutually determine such agreements are necessary to respond to new or changed circumstances that arise during performance. The Contractor shall be responsible for the cost of any such GTA, and the Parties shall effectuate the addition of new GTAs, and corresponding contract price adjustments, pursuant to FAR 52.243-1 – Changes – Fixed-Price (ALT I) as incorporated herein. To propose new GTAs during contract performance, the Contractor shall work with the Technical Manager. The Technical Manager will then, when deemed appropriate by NASA, contact the Performing Organization Point of Contact to facilitate negotiation of the terms of each GTA between the Contractor and NASA.

(ii) *NASA personnel.* NASA has unique personnel and expertise that NASA is making available to HLS contractors in accordance with the terms of this clause. In its proposal and during contract performance, at no cost to the Contractor, the Contractor may request the use of up to sixty (60) full-time NASA employees or equivalent support contractor personnel ("EPs") for targeted advisory support during contract performance ("collaboration"). The Offeror shall document its initial requested approach to collaboration in its Collaboration Plan. During contract performance, the Contractor shall

document its collaboration requests in writing to the Technical Manager. The Contractor shall request specific areas of technical subject matter expertise (e.g., engineering, operations, or safety) and the duration and amount of the requested resources, but the Contractor shall not request specific EPs by name or title. NASA has the sole authority to determine whether it will provide any portion of the collaboration resources requested by the Contractor. During contract performance, NASA reserves the right to unilaterally change its approach to collaboration at any time, including the right to modify the specific EPs offered to the Contractor and the amount, type, and/or duration of their support, and including the right to cease collaboration at any time. At all times during collaboration, the EPs remain employed by, and under the supervisory control of, NASA or the NASA support contractor, as appropriate. While collaborative communication between the Contractor and provided EPs is expected in furtherance of the EPs' advisory roles, the Contractor shall not direct or supervise the work of EPs. NASA will use reasonable efforts to ensure equitable resources are provided to all HLS contractors in support of their respective collaboration approaches, but makes no guarantees that identical resources will be provided. Specific resources will be narrowly tailored to a Contractor's unique development approach and associated needs and objectives.

(2) *Disclaimer*. NASA makes no warranty whatsoever as to the availability or suitability of NASA property, facilities, assets, services, or EPs made available under this clause. The Contractor assumes all responsibility for determining the suitability for use of all NASA resources, including technical suitability, schedule availability, and cost. NASA provides all resources as-is. The Contractor uses all NASA resources at its own risk.

(3) *Relationship to insight.* Collaboration and insight are separate activities under this contract, governed by uniquely-applicable terms and conditions. The relationship between the Contractor and NASA workforce associated with insight on this contract shall be governed by contract section H clause, Insight, and shall be effectuated through the Contractor's Insight Implementation Plan. While NASA intends to use unique personnel to perform collaboration and insight respectively, NASA reserves the right to have personnel perform both functions. NASA may use personnel performing collaboration and/or insight as part of NASA's process in deciding whether to exercise one or more contract options; these individuals may serve as evaluators, and NASA may rely on the firsthand observations and knowledge of these individuals gained through collaboration and insight when evaluating whether to exercise of one or more of the Contractor's contract options.

(4) *Authority to commit the Government.* The Contracting Officer retains sole authority to commit the Government in matters which would change contract price, quantity, delivery schedule, or any other requirement of this contract, including interpretation of technical requirements. The Contracting Officer may designate one or more representatives (e.g., Technical Managers or Contracting Officer's Representatives) to assist with contract administration, but these individuals have no authority to commit the Government. Similarly, individuals performing collaboration and/or insight have no authority to commit the Government, and nothing in this clause shall be construed to confer authority, actual or apparent, to these individuals. Such individuals may offer their

opinions, advice, knowledge, or expertise to the Contractor during performance, but the Contractor is not bound to comply with this input and does so on its own accord and at its own risk.

(5) *Impermissible use of NASA as a subcontractor or supplier.* The Contractor shall not use the NASA resources made available pursuant to paragraphs (b)(1)(i) or (ii) of this clause to solely provide any end-item deliverable, including spacecraft components, subsystems, or elements, nor any ground or flight hardware or software, that is the responsibility of the Contractor under the terms of this contract. The Contractor shall not rely solely on NASA for the provision of complete flight or ground operations in support of this effort. This paragraph does not prohibit the Contractor's use of GFP or any other Government-furnished item provided by the Government pursuant to another term of this contract.

(6) *Contractor Waiver of Claims.* By choosing to use NASA in support of contract performance, Contractor hereby waives any claims against NASA, its employees, its related entities, (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors at any tier) and employees of NASA's related entities for any injury to, or death of, Contractor's employees or the employees of Contractor's related entities, or for damage to, or loss of, Contractor's property or the property of its related entities arising from or related to activities conducted pursuant to this Clause, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct. The Contractor further agrees to extend this waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury, death, damage, or loss arising from or related to activities conducted pursuant to this clause.

(c) *Use of resources from a Government Agency other than NASA.* The Contractor shall obtain and maintain any necessary contracts or agreements between the Contractor and any Government Agency authorizing the use of Government property, facilities, assets or services in performance of this contract (except as may be expressly stated in this contract as furnished by the Government). The Contractor shall be responsible to arrange any contracts or agreements outside of this contract as it deems appropriate. The terms and conditions of such contracts or agreements will govern the use of those Government resources. Any costs associated with such contracts or agreements shall result in no increase in the price of this contract. All remedies to disputes or performance issues shall be resolved in accordance with the terms and conditions of those contracts or agreements. The Contractor shall notify the Contracting Officer, COR, or designee of any contracts or agreements between the Contractor and any Government Agency under this paragraph. NASA makes no warranty whatsoever as to the availability or suitability for use of Government property, facilities, assets, or services made available by another Government Agency under the terms and conditions of other contracts or agreements. The Contractor assumes all responsibility for determining the suitability for use of all property, facilities, assets, or services acquired or made available to the Contractor by a Government Agency under other contracts or agreements. The Contractor further acknowledges and agrees that

any use of such Government property, facilities, assets, or services shall not relieve the Contractor of full performance responsibility under the contract.

(d) *Safeguarding of confidential or proprietary information.* The Trade Secrets Act (18 U.S.C. § 1905) prohibits NASA personnel from disclosing the Contractor's proprietary information unless authorized by law to do so. NASA will undertake all necessary precautions in order to ensure that Contractor confidential or proprietary information is protected throughout contract performance.

(e) *Contractor responsibility*. Notwithstanding the Contractor's use of Government resources, the Contractor remains fully responsible for the performance of all requirements as set forth in this contract. The Government's provision of the resources described in this clause shall not be construed as: authorization; endorsement or approval of milestones; certification or final acceptance or rejection of certification success; or as a defense to any finding of mission failure or final acceptance or rejection of contract deliverables.

(End of Clause)

DOMESTIC SOURCE REQUIREMENTS

(a) *Definitions.* As used in this clause only, the following definitions apply.

(1) "Components" means those materials and supplies directly incorporated into a domestic end product.

(2) "Controlling interest" means ownership of an amount of equity in such entity sufficient to direct management of the entity or to avoid transactions entered into by management. Ownership of at least fifty-one (51) percent of the equity in an entity creates a presumption that such an interest is controlling; however, the ultimate determination as to whether the interest is controlling resides with NASA.

(3) "Corporate Contribution" means a component of a contractor's proposal that is provided to NASA entirely at no cost to NASA (i.e., no NASA funding provided under this contract is used by the contractor to procure, directly or indirectly, the supplies or services classified by the contractor as a Corporate Contribution) and that does not otherwise constitute foreign participation in a research and development effort proposed pursuant to the no- exchange-of-funds policy and procedure as set forth in NASA FAR Supplement 1835.016-70(a) and (b).

(4) "Domestic end product" means a product for which the cost of its components that are mined, produced, or manufactured in the United States exceed fifty (50) percent of the cost of all of its components. The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Assembly,

integration, and testing would be necessarily included in the cost of manufacturing. The manufacturing costs of domestic end products, including all labor and services associated with such manufacturing, should be included in the overall calculation when determining if the cost of components exceed 50% of all components per the clause.

(5) "Research and development" means basic research; applied research; design and development of subsystems and components; and completion of all certification milestone reviews, excluding certification of flight readiness, and concluding with design certification review.

(6) "Space transportation services" means: final testing, assembly, and integration of a complete HLS; integration of the HLS with the launch vehicle and preparation of that integrated vehicle for flight; and the conduct of transporting a space transportation vehicle or payload to, from, or within outer space, or in suborbital trajectory. This includes, but is not limited to: launch of any or all HLS components, whether integrated or not; transportation to and docking with Gateway or Orion; and transportation between Gateway or Orion and the lunar surface.

(7) "Space transportation vehicle" means any vehicle constructed for the purpose of operating in, or transporting a payload both to and within, space.

(8) "United States commercial provider" means any corporation, partnership, joint venture, association, or other entity which is organized or existing under the laws of the United States or any State, and whose controlling interest is held by United States citizens or permanent residents.

(b) *Domestic source restrictions.*

(1) *Research and development*. The contractor may incorporate foreign participation in research and development efforts if the participation is proposed either as a Corporate Contribution or through the no-exchange-of-funds procedure set forth in NFS 1835.016-70(b). In accordance with NFS 1835.016-70(a)(3), NASA funding may not be used for subcontracted foreign research and development efforts. However, subject to the other provisions of this clause, and in furtherance of completing research and development under this contract, the contractor may make direct purchases from non-U.S. sources of supplies and/or services, including major components or subsystems, if those services or supplies are not, in and of themselves, research and development efforts. Minor modifications of existing supplies for use on or integration into HLS shall not constitute research and development for purposes of this paragraph.

(2) *Services.* In accordance with 51 U.S.C. § 50131, space transportation services shall be provided by United States commercial providers. The contractor may utilize subcontractors for the performance of this work only if the total value of the space transportation services performed by non-United States commercial providers does not exceed 50% of the total price for space transportation services paid by the Government under this contract.

(3) *Vehicle composition*. In accordance with NFS 1835.016-70(a)(3) and national space policy, the direct purchase of supplies and/or services, which do not constitute research and development, from non-U.S. sources by U.S. award recipients is permitted, provided, however, all space transportation vehicles utilized by the contractor in performance of this contract, including but not limited to launch vehicles and the integrated HLS, shall be domestic end products.

Disclaimer. The proposed use of foreign research and development efforts that were not classified by the contractor in its proposal as a Corporate Contribution shall not be used by the contractor at any time as a basis for altering its responsibilities under this contract or seeking a contract price adjustment; such responsibilities, and the contract's fixed price, shall not be contingent on NASA reaching an agreement with a sponsoring foreign agency or funding institution in exchange for the contractor's proposed foreign participation. NASA makes no representations or guarantees regarding the execution of any intergovernmental agreement or agreement with any other funding institution pertaining to the contractor's foreign proposal component(s) or the timing of any such agreement. Regardless of the status of any agreement between NASA and a sponsoring foreign agency or funding institution, the contractor remains fully responsible for fulfilling its contractual obligations to NASA on schedule and within the fixed price of this contract. The contractor is not entitled to use any failure by NASA to execute an agreement with a third party in support of proposed foreign research and development efforts or any delays in the execution of such agreements as a defense for non-performance or as the basis for any claim or request for equitable adjustment under this contract.

(c) *Certification and materiality.*

(1) *Certification.* Contractors must certify that they meet all requirements of this clause in responding to this solicitation. Contractors that fail to meet these requirements are ineligible for award.

(2) *Materiality.* The contractor's continuing compliance with this clause is a material condition of receiving contract payments. The contractor shall comply with this clause at all times during contract performance. The contractor's failure to comply with the terms of this clause may result in the Government exercising its right to terminate the contract for default in accordance with FAR 52.249-9 and the applicable terms of this contract. The Government may choose not to exercise its right to terminate the contract; however, such an election is not a waiver of its right to do so in the future.

(End of clause)

LAUNCH, FLIGHT, OR REENTRY LICENSES, PERMITS, AND OTHER AUTHORIZATIONS

(a) The Contractor is responsible for ensuring that it, or its subcontractors, obtain and maintain a Federal Aviation Administration license, in accordance with 51 U.S.C. Section 50901 *et seq.*, for all launch and reentry operations performed under this contract.

(b) The Contractor is responsible for ensuring that it, or its subcontractors, obtain and maintain the necessary licenses, permits, and clearances that may be required by the Department of Transportation, Department of Commerce, Department of Defense, NASA, or other Governmental agencies in order to perform the requirements of this contract, including but not limited to all flight tests and spaceflight demonstration missions.

(c) In the event conflicts or other issues arise related to the licenses, permits, and other authorizations required by this clause, the Contractor is responsible for resolving the conflict, shall immediately notify the Contracting Officer of the conflict, and shall describe the methods the Contractor used to resolve the conflict.

(End of clause)

STATEMENT ON WAIVER OF RIGHTS TO INVENTIONS

NASA has determined that the interest of the United States would be served by waiving to the Contractor, in accordance with 51 U.S.C. 20135(g), rights to inventions or class of inventions made by the Contractor in the performance of this contract. Therefore, upon petition submitted by the Contractor, as set forth in NFS 1852.227-70, New Technology, NASA will waive such rights to the Contractor.

(End of Clause)

PUBLIC AFFAIRS

(a) It is anticipated that the Contractor will execute media events to cover major contract activities. The Contractor may, consistent with Federal law and this Contract, release general information regarding its activities conducted within the scope of the Contract:

(1) The Contractor will coordinate with the NASA Public Affairs Office (PAO) at Marshall Spaceflight Center and at Headquarters in a timely manner prior to major media releases, media interviews, news conferences, contingency statements, media scouts, photo opportunities and film crew activities regarding NASA HLS-related efforts.

(2) The use of any direct quote by a NASA official shall be submitted for NASA concurrence to ensure accuracy prior to its release.

(3) NASA will coordinate, with the Contractor, public releases of information to obtain comments and technical corrections related to the Contractor's HLS-related efforts prior to

NASA's release of information to the public. The Contractor shall use its best efforts to provide its review and comments back to NASA within five (5) days of the request. If comments are not provided within the five (5) day time period, the submitted content will be considered acceptable for release. For breaking news items, there may be a need for more timely release of information to the public in which case the Government PAO team will coordinate with the Contractor for imminent release.

(4) The Contractor shall assist the NASA PAO in developing the mission commentary for NASA Television by furnishing HLS background material.

(5) The Contractor may also be requested to provide information to support the development of press kit documents and NASA news conferences.

(6) At a minimum of forty-five (45) days in advance, the Contractor shall work with the COR to coordinate any public affairs requirements for any launches, landings, major milestones and tests under this contract.

(7) If the Contractor has knowledge that the press is inquiring about an event that meets criteria set forth in NFS 1852.223-70 SAFETY AND HEALTH MEASURES AND MISHAP REPORTING (DEC 2015), the Contractor shall promptly notify the Contracting Officer, or designee, of the event. The Contracting Officer, or designee, will facilitate access to NASA Public Affairs. NASA Public Affairs will work with the Contractor to generate a coordinated response to the Press and the public.

(b) The Contractor shall protect NASA crew member's audio and imagery for all contract activities in order to protect NASA crew member privacy. For downlinked audio and imagery, the Contractor shall route the data in real-time to the NASA Mission Control Center. NASA will monitor feed(s) and instruct the Contractor to remove the feed from release to the public in the event of a privacy concern. For imagery and audio recorded during flight operations and recovered post-flight, the Contractor shall send a copy of the data to NASA for review. The Contractor shall not release any video and/or audio with NASA crew members in view until the NASA review is complete. NASA will inform the Contractor if any data is restricted. Restricted data cannot be released by the Contractor, either internally or externally, or used in anyway. Data that does not contain NASA crew members may be used by the Contractor after proper coordination in accordance with paragraph (a) above.

(c) The Contractor shall not use the words "National Aeronautics and Space Administration" or the letters "NASA" in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, the Contractor shall submit in advance any proposed public use of the NASA name or initials for NASA review and approval. NASA approval shall be based on applicable law and policy governing the use of the NASA name and initials. NASA's approval will not be unreasonably withheld. Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. The Contractor shall not

publicly use such emblems/devices without prior NASA review and approval in accordance with such regulations.

(d) NASA does not endorse or sponsor any commercial product, service, or activity. NASA's certification of the HLS under this Contract does not constitute certification or endorsement by NASA that the HLS is safe for public transportation of humans in space and to and from the lunar surface. NASA's HLS certification means the Contractor's HLS has met NASA's safety requirements for transporting NASA crew in space and to and from the lunar surface. The Contractor agrees that nothing in this Contract will be construed to imply that NASA authorizes supports, endorses, or sponsors any product or service of the Contractor resulting from activities conducted under this Contract.

(End of Clause)

MISSION SUCCESS DETERMINATION

(a) *Applicability.* Except as otherwise specified within this clause, for the mission portion of the work under this contract, the terms and conditions contained in this clause are in lieu of the terms and conditions that apply in the event of a default as prescribed in clause 52.249-9 *Default* (*Fixed-Price Research and Development*) *(Deviated)*; paragraph (j) of clause 52.232-32 *Performance Based Payments*; and paragraphs (e) and (f) of clause 52.246-7 *Inspection of Research and Development – Fixed-Price*. Reference by any clause or other term of this contract to termination for default provisions or procedures shall be interpreted as referring to this clause when the event that would potentially qualify as a default pursuant to paragraph (a)(1) of clause 52.249-9 *Default (Fixed-Price Research and Development) (Deviated)* will or does occur during the mission portion of the work under this contract.

(b) *Definitions.* As used in this clause:

(1) "Crew" means two (2) U.S. Government astronauts.

(2) "Full mission success" means that the Contractor has achieved all primary and secondary objectives as defined in the Statement of Work.

(3) "Mishap" has the definition contained within NASA Procedural Requirement 8621.1C.

(4) "Mission" means the period of performance under this contract that begins when the Contractor has achieved, as determined solely by the Contracting Officer, all of the milestone acceptance criteria for the "Lunar Orbit Checkout Review" milestone, and ends:

(i) Upon the safe return of the crew from the lunar surface to Gateway or Orion; or

(ii) At the time the Contractor ceases attempting to achieve, or is no longer capable of achieving, any of the primary objectives listed in the Statement of Work, as applicable to either the Base period scope of work or the Option A scope of work.

(5) "Mission failure" means loss of one or more primary objectives, or a serious injury or fatality that occurs during performance of the mission and as a result of the mission.

(6) "Partial mission success" means that the Contractor has, as the objectives are defined in the Statement of Work:

(i) Achieved all primary objectives; and

(ii) Failed to achieve one or more secondary objectives.

(7) "Serious injury" means any injury resulting from a mishap in which any one or more of the following apply:

(i) Requires hospitalization for more than forty-eight (48) hours, commencing within seven (7) days from the date the injury occurred;

(ii) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(iii) Causes severe hemorrhages or nerve, muscle, or tendon damage;

(iv) Involves any internal organ; or

(v) Involves second- or third-degree burns, or any burns affecting more than five (5) percent of the body surface.

(8) "U.S. Government astronaut" means any individual who meets the definition of "government astronaut" under 51 U.S.C. § 50902(4)(A), (B), and (C)(i), which means an individual who is an employee of the U.S. Government, including the uniformed services, engaged in the performance of a Federal function under authority of law or an Executive Act and designated as a government astronaut by NASA in accordance with applicable NASA requirements.

(c) *Mission success determination.*

(1) The Contracting Officer has the sole authority to determine whether any mission undertaken by the Contractor pursuant to this contract achieved full mission success, partial mission success, or constituted a mission failure.

(2) At the Contracting Officer's request, the Contractor shall submit any data or other evidence related to the performance of the mission in order to aid the Contracting Officer in making a mission success determination.

(3) Within fifteen (15) calendar days from receipt by the Contracting Officer of all of the data requested under paragraph (c)(2), the Contracting Officer will make the mission success determination and thereafter provide timely notice of this determination to the Contractor.

(d) *Milestone payment amount determination.*

(1) Following adjudication and payment, if any, of the Contractor's final milestone payment according to the terms and conditions of this clause, the Government's final milestone payment obligations to the Contractor will be fully satisfied, and the Contractor shall not be entitled to any additional final milestone payment pursuant to any other term or condition of this contract.

(2) *Payment eligibility.*

(i) Upon a determination from the Contracting Officer that the Contractor has achieved full mission success, subject to the other terms of this clause, the Contractor is eligible for payment by the Government of the full amount of the Contractor's final milestone payment.

(ii) Upon a determination from the Contracting Officer that the Contractor has achieved partial mission success, subject to the other terms of this clause, the Contractor is eligible for payment by the Government of no more than half (50%) of the Contractor's final milestone payment.

(iii) Upon a determination from the Contracting Officer that the Contractor has experienced a mission failure, the Contractor is ineligible for payment by the Government of any final milestone payment.

(3) *Payment of the final milestone payment.* NASA shall make the final milestone payment to the Contractor in the applicable amount pursuant to paragraph (d)(2) of this clause if:

(i) The mission has concluded, and the Contractor has participated in the post-mission assessment review as required under this contract; and

(ii) The Contractor, as determined solely by the Contracting Officer, has met all of the final milestone acceptance criteria as specified in this contract, including delivery of all items required to be delivered by the Contractor as part of this milestone's acceptance criteria.

(e) *Contractor's willful misconduct or gross negligence.* If an event or events occur during performance of the mission that would potentially qualify as a default pursuant to paragraph (a)(1) of clause 52.249-9 *Default (Fixed-Price Research and Development) (Deviated)*, and such event or events were the result of the Contractor's willful misconduct or gross negligence, this clause no longer governs, and the Government shall have all of the rights and remedies made available under clause 52.249-9 *Default (Fixed-Price Research and Development) (Deviated)*.

(f) *Control of the HLS*. The parties agree that the terms and conditions of this clause remain in effect whether the Contractor or the Government is in control, operational or otherwise, of the HLS in any capacity during performance of the mission.

(End of Clause)

DELIVERY OF DATA AND HARDWARE IN THE EVENT OF TERMINATION FOR CONVENIENCE OR DEFAULT

(a) In the event of a termination for the convenience of the Government, or a termination for default, the Government may elect to take title to and request delivery of:

(1) Any items specified in paragraphs (b)(6)(i) and (ii) of 52.249-2 – *Termination for Convenience of the Government (Fixed-Price)*;

(2) Any items specified in paragraphs (e)(1) and (2) of 52.249-9 – *Default (Fixed-Price Research and Development)*;

(3) Any completed or partially-completed work not previously delivered to, and accepted by, the Government, including, but not limited to, any partially-completed draft technical data packages, computer software, and computer software documentation otherwise required as deliverables under this contract, and any hardware developed during the performance of this contract, regardless of whether the Contractor would have been required to deliver such hardware; and

(4) Other property specifically produced or acquired for the terminated or non-terminated portion of this contract, including, but not limited to, any long-lead hardware or software items, or components thereof, procured under any CLIN of this contract.

(b) Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(End of Clause)

INSURANCE FOR HARM TO U.S. GOVERNMENT ASTRONAUTS

(a) *Definitions.* As used in this clause—

(1) "Harm" means bodily injury to, impairment of health of, or death of, any U.S. Government astronaut;

(2) "Mission activities" means activities performed pursuant to the terms of this contract commencing with U.S. Government astronaut ingress into the contractor's human landing

system vehicle or any component thereof for transportation to the lunar surface and concluding with U.S. Government astronaut egress from the contractor's human landing system vehicle or any component thereof upon return from the lunar surface.

(3) "U.S. Government astronaut" means any individual who meets the definition of "government astronaut" under 51 U.S.C. § 50902(4)(A), (B), and (C)(i), which means an individual who is an employee of the U.S. Government, including the uniformed services, engaged in the performance of a Federal function under authority of law or an Executive Act and designated as a government astronaut by NASA in accordance with applicable NASA requirements.

(b) *Insurance Requirements.*

(1) The contractor shall maintain insurance during the mission activities of this contract for harm to any and all U.S. Government astronauts that is sustained during the contractor's performance of mission activities.

(2) The insurance shall be in an amount not less than $5,000,000 per U.S. Government astronaut engaging in mission activities.

(3) At the discretion of the Contracting Officer, the Contractor may demonstrate financial capability in an amount no less than $5,000,000 per U.S. Government astronaut engaging in mission activities in lieu of the insurance requirements of this clause.

(4) The insurance required by this clause shall apply regardless of fault, except that insurance proceeds shall not be paid to any U.S. Government astronaut or their beneficiaries when the harm to that astronaut resulted from the willful misconduct of that astronaut.

(5) The insurance shall cover harm that occurs or manifests within one year of the completion of the mission activity.

(6) U.S. Government astronauts shall be named as additional insured parties under these policies.

(7) The contractor shall provide acceptable evidence of the insurance or financial capability to the Contracting Officer, which shall be subject to Contracting Officer approval, no later than the commencement of mission activities under this contract.

(End of clause)

CROSS WAIVER OF LIABILITY FOR LUNAR SURFACE ACTIVITIES

(a) As used in this clause—

(1) "Damage" means:

(i) Bodily injury to, impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of, any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) "Lunar Surface Activities" means activities performed pursuant to this contract on the surface of the Moon. Lunar Surface Activities commence upon contact with the lunar surface and conclude with liftoff from the lunar surface.

(3) "Party" means either NASA or the Contractor, as appropriate (collectively, the "Parties").

(4) "Related Entity" means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. The terms "contractor" and "subcontractor" include suppliers of any kind.

(b) Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities, or employees of the other Party's Related Entities, for Damage arising from or related to Lunar Surface Activities.

(c) This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this Contract.

(d) Each Party shall extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities, for Damage arising from or related to Lunar Surface Activities.

(e) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) Claims between a Party and its own Related Entity or between its own Related Entities;

(2) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to this contract or is otherwise bound by the terms of this cross-waiver) for bodily injury, other impairment of health, or death of such natural person;

(3) Intellectual property claims;

(4) Claims for Damage caused by willful misconduct;

(5) Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities pursuant to paragraph (c) of this clause; or

(6) Claims by a Party arising out of or relating to the other Party's failure to perform its obligations under this contract.

(f) Nothing in this clause shall be construed to create the basis for a claim or suit where none would exist.

(End of clause)

CONTRACTOR USE OF GOVERNMENT-FURNISHED EQUIPMENT, PROPERTY, OR INFORMATION

(a) *Applicability.* The terms and conditions set forth in this clause are applicable only to the Government-furnished property, whether required by the Government for use or requested by the Contractor for use during performance of this contract, that the Contractor will consume or otherwise fully expend during performance of this contract (referred to hereafter in this clause as "Consumable Property").

(b) *Consumable Property Subject to the Terms of this Clause.* NASA has prescribed a list of Consumable Property that is required for Contractor use during performance of the contract on a no-charge basis. Through the execution and submission with proposal of one or more Optional Government-furnished Property Agreements (OGFPAs), the Contractor has also identified additional Consumable Property that it proposes to use. Unless otherwise authorized in writing by the Contracting Officer,

the Contractor shall utilize all of this Consumable Property in the performance of this contract.

(c) *New OGFPAs.* During contract performance, the Parties may agree to execute additional OGFPAs if they mutually determine such agreements are necessary to respond to new or changed circumstances that arise during performance. The Contractor shall follow the instructions for use of OGFPAs as provided the OGFPA template. In the event the Contractor requests the use of new Consumable Property during performance, the Contractor shall be responsible for the cost of any such Consumable Property, and the Parties shall effectuate the addition of new OGFPAs, and corresponding contract price adjustments, pursuant to the FAR 52.243-1 – Changes – Fixed-Price (ALT I) as incorporated herein.

(d) *Delays in Delivery.* The Government shall not be responsible for conflicts, delays, or disruptions to any Contractor work due to the Contractor's reliance on, or use of, Consumable Property under this contract. Further, the Contractor agrees that late delivery of Consumable Property shall not be the subject of claims or other requests for equitable adjustment. The Contractor expressly agrees that it remains solely responsible for the adequacy, suitability, and performance of any Consumable Property utilized or otherwise relied upon when performing this contract.

(e) *Contractor Responsibility.* Notwithstanding the Contractor's use of Consumable Property under this contract, or any Contractor Use of Government Resources in support of such use (in accordance with the terms and conditions of this contract), the Contractor remains fully responsible for the performance of all requirements as set forth in this contract, including, but not limited to, any necessary integration and verification activities necessary for such Consumable Property. The Government's provision of Consumable Property shall not be construed as: authorization; endorsement or approval of milestones; certification or final acceptance or rejection of certification success; or as a defense to any finding of mission failure or final acceptance or rejection of contract deliverables.

(End of clause)

PROPOSAL INCORPORATION INTO CONTRACT

(a) Performance of this contract by the Contractor shall be conducted and performed in accordance with the detailed obligations to which the Contractor committed itself in its proposal submitted in response to Solicitation No. Broad Agency Announcement NNH19ZCQ001K_APPENDIX-H-HLS Option A.

(b) Volumes I and III of Contractor's Option A proposal are incorporated by reference, fully replace and supersede all previous proposal volumes incorporated in the contract, and are hereby made subject to the provisions of the FAR 52.215-8 – Order of

Precedence – Uniform Contract Format (Oct 1997) clause of this contract. Under FAR 52.215-8, these volumes of the Contractor's proposal referenced herein are hereby designated as item (f) of the clause, following "the specifications" in the order of precedence.

(c) As specified in the Option A solicitation, certain portions of Volume IV of the Contractor's Option A proposal are incorporated into the contract at award. For any of these items for which older versions of the item were previously incorporated into the contract, the version of the item submitted with the Contractor's Option A proposal fully replaces and supersedes all previously-incorporated versions incorporated in the contract. The Parties agree that these portions of the Contractor's proposal will be considered "Other documents, exhibits, and attachments" pursuant to paragraph (d) of FAR 52.215-8.

(End of clause)

MARKING REQUIREMENTS FOR TECHNICAL DATA AND COMPUTER SOFTWARE

(a) *Definitions.* The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

(b) *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided otherwise in this clause, only the following legends are authorized under this contract: the government purpose rights legend of this clause; the limited rights legend of this clause; the special license rights legend of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions*. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data or computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings*. Technical data or computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data or this software are restricted by the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings*. Technical data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Restricted rights markings*. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(5) *Special license rights markings*.

(i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____80MSFC20C0034____, License No. ____(Insert license identifier)____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract.

(6) *Pre-existing markings*. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data, software, or documentation with the appropriate restrictive legend for which the data qualified under the prior contract or license.

(c) *Contractor procedures and records*. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data, computer software, or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to ensure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data, computer software, or computer software documentation delivered under this contract.

(d) *Removal of unjustified and nonconforming markings*.

(1) *Unjustified markings*. The rights and obligations of the parties regarding the validation of restrictive markings on technical data, computer software, or computer software documentation furnished or to be furnished under this contract are contained in the Validation section of this clause. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation section of this clause, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings*. A nonconforming marking is a marking placed on technical data, computer software, or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation section of this clause. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or

correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(e) *Markings for scientific or technical articles.* The contractor shall mark each scientific and technical article based on or containing data first produced in the performance of this contract and submitted for publication in academic, technical or professional journals, symposia proceedings, or similar works with a notice, similar in all material respects to the following, on the cover or first page of the article, reflecting the Government's non- exclusive worldwide license in the copyright:

GOVERNMENT RIGHTS NOTICE

This work was authored by employees of Dynetics under Contract No. 80MSFC20C0035 with the National Aeronautics and Space Administration. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, or allow others to do so, for United States Government purposes. All other rights are reserved by the copyright owner.

(End of Notice)

(f) *Flow down to subcontractors and suppliers*.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(3) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(End of Clause)

VALIDATION AND CHALLENGE PROCEDURES FOR TECHNICAL DATA AND COMPUTER SOFTWARE

1. *Definitions.* The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

(b) *Validation of markings on technical data and computer software.*

(1) *Presumption regarding development exclusively at private expense – Commercial Item.* The Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified

on the basis that the item was developed exclusively at private expense. The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

(2) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (m)(1) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (m)(4) of this clause.

(3) *Prechallenge request for information.*

(i) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data or computer software delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(ii) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (m)(3)(i) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (m)(4) of this clause.

(iii) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (m)(3)(i) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (m)(4) of this clause.

(4) *Challenge.*

(i) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking

is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(A) State the specific grounds for challenging the asserted restriction;

(B) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(C) State that a Contracting Officer's final decision, issued pursuant to paragraph (m)(6) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(D) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (m)(5) of this clause.

(ii) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(iii) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(iv) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(5) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the applicable time period as specified in this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (m)(6)(ii) through (v) of this clause.

(6) *Final decision when Contractor or subcontractor responds.*

(i) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) If the Contracting Officer determines that the validity of the restrictive marking is not justified:

(A) The Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice; and

(B) As applicable to computer software only, if the Contractor agrees that an asserted restriction is not valid, the Contracting Officer may strike or correct the unjustified marking at the Contractor's expense; or return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor's expense.

(iii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iv) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is

provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(v) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(7) *Final disposition of appeal or suit.*

(i) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(A) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(B) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(ii) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(A) The Government shall continue to be bound by the restrictive marking; and

(B) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(8) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(i) Is publicly available;

(ii) Has been furnished to the United States without restriction; or

(iii) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(9) *Decision not to challenge*. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(10) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier that assert restrictive markings or who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. However, neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(c) *Flow down to subcontractors and suppliers*.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(3) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

(End of clause)

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS

(a) *Definitions.* The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with government purpose rights, limited rights, restricted rights, or SBIR data rights legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data or computer software received from the Government marked with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign a non-disclosure agreement.

(3) GFI marked with specially negotiated license rights legends.

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed a non-disclosure agreement. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) GFI technical data marked with commercial restrictive legends.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) Covered Government support contractors. If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends, the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) *Indemnification and creation of third party beneficiary rights*. The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys' fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the

Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

(End of clause)

CONTRACTOR DISCLOSURE OF INFORMATION

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

CYBERSECURITY AND PROJECT PROTECTION

(a) *Definitions*. As used in this clause, the following definitions apply:

(1) "Covered contractor system" means any IT system, OT system, or Mission system; that is owned, or operated by or for, the contractor, its subcontractors, or its suppliers; that processes, stores, accesses, or transmits any data and information; as part of the performance of this contract.

(2) "Cyber incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on a covered contractor system and/or the data and information residing therein.

(3) "Data and information" means technical data (as that term is defined in the *Rights in Data – General (Deviated)* clause) and/or information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

(4) "Information Technology (IT) system" means: any services, equipment, or interconnected system(s) or subsystem(s) of equipment; either contractor-owned or to which NASA may or will take legal title in accordance with this contract; that are used by the

contractor, in the performance of this contract, for the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data and information. An IT system may include computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including cloud computing and help-desk services or other professional services which support any point of the life cycle of the equipment or service), and related resources.

(5) "Mission system" means any of the following: a space vehicle; instruments developed for, and used in, space flight programs and projects; critical technical facilities specifically developed or significantly modified for space flight systems; launch systems. A mission system can also include components, sensors, avionics, and communications equipment designed and engineered for the Human Landing System vehicle and ground systems that are in direct support of space flight operations.

(6) "Operational Technology (OT) system" means hardware and software that is physically part of, dedicated to, or essential in real time to the performance, monitoring, or control of physical devices and processes. This includes but is not limited to a mission control system or center.

(7) "Radio frequency interference" means any event that is observed as an increase in spacecraft receiver noise floor, degradation, disruption, or inability to receive commands, associated with safe and purposeful spacecraft operations. Examples include changes in or loss of Position Navigation Timing (PNT) signals that threaten the accuracy of a sufficient PNT solution, or signals that threaten the loss of or interference with the operator's positive control of the spacecraft. This may also include spectrum interference, jamming, or signal spoofing.

(b) *Cybersecurity and project protection flow down requirement.* The Contractor shall flow down the functional and performance cybersecurity and project protection requirements of this contract to its subcontractors and suppliers as needed to ensure that the Government is receiving its required level of cybersecurity and project protection whether the applicable covered contractor system is owned or operated by the contractor, one of its subcontractors, or one of its suppliers. Applicable requirements include, but are not necessarily limited to, those specified in: DRDs 1725MA-009 (IT Security Management Plan), 1725MA-010 (Project Protection Plan), and 1725MA-011 (System Security Plan); Statement of Work section 4.8; contract clauses FAR 52.204-21 and NFS 1852.204-76, and this contract clause (CYBERSECURITY AND PROJECT PROTECTION). Note that subcontractors and suppliers are not required to prepare and submit their own plans pursuant to the indicated DRDs, but rather, that the contractor's plans shall address all covered contractor systems that are owned or operated by its subcontractors and suppliers in the same manner that these plans would address the contractor's own covered contractor systems.

(c) *Incident reporting.*

(1) *Cyber incidents.* When the contractor discovers the occurrence of a cyber incident that affects a covered contractor system or the data and information residing therein, the contractor shall—

(i) Conduct a review for evidence of compromise of data and information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor system(s) that were part of the cyber incident, as well as other information systems on the contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised data and information;

(ii) Report it to the NASA Security Operations Center (SOC) and the Contracting Officer immediately upon discovery, but in no case shall reporting occur later than within 24 hours of discovering a cyber incident;

(iii) Fully cooperate in a timely manner with requests from SOC and the Contracting Officer to provide as much information as is reasonably possible about the cyber incident. Such information could include the type of compromise (e.g., unauthorized access, unauthorized release, or inadvertent release), a description of the technique or method used in the cyber incident, and the incident outcome (e.g., successful compromise, failed attempt, unknown).

(2) *Radio frequency interference.*

(i) When the contractor discovers radio frequency interference, the contractor shall report it to the Contracting Officer immediately upon discovery.

(ii) Reporting to the Contracting Officer does not relieve the contractor of its obligation(s) to inform regulatory authorities regarding instances of harmful interference.

(d) *Cybersecurity representation and certification.* By submission of a proposal, the contractor represents that it has and, as applicable, will, implement the controls and all other cybersecurity measures as specified in the contractor's System Security Plan submitted with proposal, and that to the best of its knowledge, its subcontractors and suppliers have and, as applicable, will, implement the controls and all other cybersecurity measures that apply to their systems. For each subsequent revision to this plan, the contractor's submittal of the revised plan operates as a certification that the contractor, and to the best of its knowledge, its subcontractors and suppliers, are fully complying with the controls and all other cybersecurity measures as specified therein.

(End of clause)

NON-NASA CARGO, PAYLOADS, AND SERVICES

(a) *Definitions.* As used in this clause, the following definitions apply:

(1) "Applicable activity" means any uncrewed lunar surface landing test, crewed demonstration mission, or any risk reduction orbital flight activity or related review for which the Contractor has expressly proposed an associated milestone payment, that is performed by the Contractor as part of its performance of this contract.

(2) "Non-NASA cargo or payloads" means any tangible item or software that is not owned by NASA or otherwise provided to the Contractor by NASA as part of the required performance of this contract.

(3) "Non-NASA service" means any service performed by the Contractor for a non-NASA entity.

(4) "Non-NASA customer" means any person or entity that provides a non-NASA cargo or payloads to, or that otherwise receives a non-NASA service from, the Contractor. Note that the Contractor itself is considered a non-NASA customer if the necessary conditions are met.

(b) *Permissible activities for non-NASA customers.* During the performance of any applicable activity, subject to the procedures contained within this clause, the terms otherwise specified within the contract, and in accordance with all applicable laws, the Contractor may perform activities on behalf of, or otherwise for the benefit of, a non-NASA customer. Such activities may involve non-NASA cargo or payloads or non-NASA services.

(c) *Procedures.* The Contractor shall comply with the following procedures, terms, and conditions when proposing to perform, or when performing, the activities contemplated by paragraph (b) of this clause.

(1) *Notice to NASA.* No later than one hundred and twenty (120) days prior to the scheduled start of any activity contemplated by paragraph (b), the Contractor shall notify the Contracting Officer in writing of its proposed activities. At a minimum, this notice shall include:

(i) An identification of all non-NASA customers involved in any capacity in the activity (here, a non-NASA customer is involved if that entity will potentially benefit from the activity being proposed by the Contractor);

(ii) A description of how each of the non-NASA customers identified in (c)(1)(i) are involved in the proposed activity;

(iii) A description of the non-NASA cargo or payloads and all non-NASA services contemplated by the proposed activity, and a plan detailing the specific manner in which the

Contractor proposes to involve non-NASA cargo or payloads, or perform non-NASA services, during the performance of any applicable activity;

(iv) A compatibility assessment for all proposed non-NASA cargo or payloads;

(v) An analysis demonstrating that the proposed activities will not unduly interfere with or jeopardize the successful performance of any applicable activity;

(vi) If the proposed activities are to be performed at any time when crew are present, or are not performed when crew are present but that could reasonably increase risk to the health or safety of the crew when they are present, an analysis that identifies whether the proposed activities potentially create any additional risks to the health or safety of the crew, and if so, all measures proposed by the Contractor to eliminate, reduce, or mitigate these risks;

(vii) If applicable, plans for compliance with any FAA license requirements in accordance with 51 U.S.C. § 50901 *et seq*.;

(viii) If the proposed activities will occur during either the uncrewed lunar surface landing test or crewed lunar landing demonstrations, a proposed downward price adjustment to the applicable payment milestone, or other proposed consideration to be received by NASA, that will be provided by the Contractor to NASA if NASA approves the proposed activities [note that proposed activities that will occur during any other applicable activity need not include an accompanying proposed downward price adjustment]; and

(ix) Any additional documentation or analyses requested by the Contracting Officer.

(2) *Costs.* The Contractor shall bear full financial responsibility for all costs of the proposed activities, including but not limited to all FAA licensing requirements; costs associated with complying with this clause; and all costs associated with any other NASA requirements relating to the non-NASA cargo or payloads or non-NASA services, including any support needed from NASA in order to perform the proposed activities.

(3) *Preliminary NASA approval.* After a full review of the documentation submitted by the Contractor pursuant to paragraph (c)(1), NASA will unilaterally, and at its sole discretion, determine whether to preliminarily approve, in part or in whole, the proposed activities involving non-NASA cargo or payloads and/or the provision of the non-NASA services during contract performance. Any activity contemplated by paragraph (b) will be assessed individually by NASA and preliminary approval, if granted, will be given on a case-by-case basis. Preliminary approval of a proposed activity shall not create a presumption that NASA will approve other future activities. NASA is under no obligation to approve any such requests from the Contractor. This clause does not create any rights or entitlements for the Contractor.

(d) *Liability and insurance*.

(1) *Liability.* Prior to performing any activities preliminarily approved by NASA as contemplated by paragraph (c)(3), the Contractor shall:

(i) Extend section (c) of NASA FAR Supplement clause 1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012) (DEVIATED), section (c) of NASA FAR Supplement clause 1852.228-78 CROSS-WAIVER OF LIABILITY FOR SCIENCE AND SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (OCT 2012) (DEVIATED), and the clause CROSS-WAIVER OF LIABILITY FOR LUNAR SURFACE ACTIVITIES to all non-NASA customers by requiring them to waive, in writing, any and all claims against entities listed in those clauses for all applicable activities, except that non-NASA customers are not required to waive such claims against the Contractor unless the Contractor so requires;

(ii) Inform its non-NASA customers that the entities listed in the clauses specified in paragraph (d)(1)(i) have not waived any claims against the non-NASA customers;

(iii) Obtain a written acknowledgement by the non-NASA customer that the entities listed in the clauses specified in paragraph (d)(1)(i) have not waived any claims against the commercial customers; and

(iv) Provide the written documentation required by paragraphs (d)(1)(i)-(iii) to the Contracting Officer.

(2) *Insurance.* The Contractor shall require non-NASA customers to maintain insurance covering damage to or loss of property or injury or death of any person sustained during any applicable activity that is directly or indirectly caused by the non-NASA cargo or payloads or performance of the non-NASA commercial service. The Contractor shall provide the Contracting Officer evidence to the Contracting Officer of required insurance no later than thirty (30) days prior to the launch on which the non-NASA cargo or payload is manifested or on which the non-NASA commercial service will be provided. The amount of required insurance and the terms and conditions for the policy or policies shall be subject to review by the Contracting Officer. Once reviewed, the policy or policies may not be modified or canceled without the prior, written approval of the Contracting Officer.

(e) *Final NASA approval.* Following any preliminary NASA approval provided pursuant to paragraph (c)(3), the provision by the Contractor to the Contracting Officer of all of the written documentation required by paragraph (d), and the written approval by the Contracting Officer of that documentation, the proposed activity contemplated by paragraph (b) is considered to have final NASA approval and the Contractor may proceed to perform the activities involving non-NASA cargo or payloads and/or non-NASA services as proposed during contract performance. During the performance of any applicable activities, the Contractor shall not perform any activities involving non-NASA cargo or payloads or non-NASA services without first obtaining this final NASA approval.

(f) *Contractor responsibility for performance.* The Contractor remains fully responsible for all requirements as set forth in this contract. The Government's authorization and approval as contemplated by this clause shall not be construed as: any other contractual authorization; endorsement or approval of milestones; certification or final acceptance or rejection of certification success; or as a defense to any finding of mission failure or final acceptance or rejection of contract deliverables.

(g) *Contractor responsibility for delays and impacts.* The Contractor shall not modify the contractual schedule for any applicable activity in order to accommodate non-NASA cargo or payloads on behalf of a non-NASA customer, or to otherwise provide a non-NASA commercial service to a non-NASA customer, unless such a modification is explicitly approved by NASA as part of its final approval granted pursuant to paragraph (e). If NASA approves such a schedule change, NASA shall not be responsible for any costs, liabilities, or obligations associated with the rescheduling. The Contractor shall bear all costs and be responsible for any related impacts or delays. If the Contractor is unable to provide the non-NASA cargo or payload prior to integration, or if there is insufficient time to complete a new mission analysis before the launch date, the Contractor shall bear the cost and shall be responsible for designing, fabricating, installing, and integrating a cargo or payload mass simulator in lieu of the non-NASA cargo or payload.

(h) *Disclaimer of NASA liability to non-NASA customers and liability to Contractor for lost revenue.* In no event shall NASA be liable for any costs or expenses incurred by non-NASA customers or by the Contractor on behalf of its customers. Further, in no event shall NASA be liable to the Contractor for any lost revenue, anticipatory profits, or consequential damages resulting from actual or prospective non-NASA customers.

(i) *Relationship to Insight*. Nothing in this clause shall affect, modify, substitute, or in any way diminish NASA's right to monitor Contractor performance of any applicable activity or of any activity approved by NASA pursuant to paragraph (e) in accordance with the GOVERNMENT INSIGHT clause within this contract.

(End of clause)

SECTION I - CONTRACT CLAUSES

52.202-1 DEFINITIONS (JUN 2020)

52.203-3 GRATUITIES (APR 1984)

52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)

52.203-7 ANTI-KICKBACK PROCEDURES (JUN 2020)

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)

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52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)

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52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

52.204-2 SECURITY REQUIREMENTS (AUG 1996)

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)

52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2018) (IBR)

52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018)

52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)

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52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)

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52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020)

52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)

52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991) (IBR)

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52.215-2 AUDIT AND RECORDS—NEGOTIATION (JUN 2020)

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52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS (AUG 2011)

52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS (DEVIATION 18-04)

52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA-MODIFICATIONS (JUN 2020) (IBR)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)

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52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999) (IBR)

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52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

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52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) ALTERNATE I (APR 1984)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

52.227-11 PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (MAY 2014) [(MODIFIED BY NFS 1852.227-11 (APR 2015)]

52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987)

52.227-21 TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT-MAJOR SYSTEMS (MAY 2014)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)

52.232-2 PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

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52.233-1 DISPUTES (MAY 2014) ALTERNATE I (DEC 1991)

52.233-2 SERVICE OF PROTEST (SEP 2006) (IBR)

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52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)

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52.243-1 CHANGES—FIXED-PRICE (AUG 1987) ALTERNATE I (APR 1984)

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52.245-1 GOVERNMENT PROPERTY (JAN 2017)

52.245-1 GOVERNMENT PROPERTY (JAN 2017) ALTERNATE I (APR 2012)

52.245-9 USE AND CHARGES (APR 2012)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)

52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984) (IBR)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984) (IBR)

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of Procurement Officer and shall not be binding until so approved.

(End of clause)

52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

(a) *Definitions.* As used in this clause—

Covered contractor information system means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

Federal contract information means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

Information means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

Safeguarding means measures or controls that are prescribed to protect information systems.

(b) *Safeguarding requirements and procedures.*

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (*i.e.,* information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

52.216-18 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date of contract award through expiration of contract including exercised option periods.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than $10,000 ,the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order*. The Contractor is not obligated to honor --

(1) Any order for a single item in excess of $100,000,000 ;

(2) Any order for a combination of items in excess of $100,000,000 ; or

(3) A series of orders from the same ordering office within 60 days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e*., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 10 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2020)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 5 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 7 years.

(End of clause)

52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 21-03)

(a) Definition. As used in this clause -
United States or its outlying areas means—

(1) The fifty States;

(2) The District of Columbia;

(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4) The territories of American Samoa, Guam, and the United States Virgin Islands; and

(5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) Authority. This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) Compliance. The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at https://www.saferfederalworkforce.gov/contractors/

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101, performed in whole or in part within the United States or its outlying areas.

(End of clause)

52.232-32 PERFORMANCE-BASED PAYMENTS (APR 2012)

(a) *Amount of payments and limitations on payments*. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment*. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests*.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (a) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments*.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise

determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments*. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's -

(i) failure to make progress, or

(ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) *Title*.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) *Property*, as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not -

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) *Risk of loss*. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls*. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access*. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the

Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default*. If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights*.

(1) No payment or vesting of title under this clause shall -

(i) excuse the Contractor from performance of obligations under this contract, or

(ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause -

(i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and

(ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment*. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification*. As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that -

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

52.243-7 NOTIFICATION OF CHANGES (JAN 2017)

(a) *Definitions*. *Contracting Officer,* as used in this clause, does not include any representative of the Contracting Officer.

Specifically Authorized Representative (SAR), as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice*. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within 3 (*to be negotiated*) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor

regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance*. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; *provided,* however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response*. The Contracting Officer shall promptly, within 30 (*to be negotiated*) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments*.

(1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases *contract price* and *cost* wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)

52.249-9 DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984) (DEVIATED)

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work; however, the Contractor’s liability shall be limited to the amount of ten percent (10%) of the total value of the current Contract Line Item Numbers (CLINs) that the Contractor is performing when the liability arose. This limitation of liability will not apply if the event or events triggering default under this clause were the result of the Contractor’s willful misconduct or gross negligence, and has no effect whatsoever upon the Government’s right to demand repayment of the amount of unliquidated performance-based payments made to the Contractor under FAR 52.232-32(j). However, in all cases, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any: (1) completed or partially completed work not previously delivered to, and accepted by, the Government, including, but not limited to, any partially completed draft technical data packages, computer software, and computer software documentation otherwise required as deliverables under this contract, and any hardware developed during the performance of this contract, regardless of whether the Contractor would have been required to deliver such hardware; and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract, including, but not limited to, and any long lead hardware or software items or components thereof procured under any CLIN of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (MAY 2020)

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause. Such a concern is “not dominant in its field of

operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at *https://www.sba.gov/document/support--table-size-standards*.

(e) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award

Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it [_] is, [x] is not a small business concern under NAICS Code 541715 assigned to contract number 80MSFC20C0034.

(2) The Contractor represents that it [_] is, [_] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) The Contractor represents that it [_] is, [_] is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. The Contractor represents that—

(i) It [_] is, [_] is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [_] is, [_] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. The Contractor represents that—

(i) It [_] is, [_] is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [_] is, [_] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture. Each EDWOSB concern

participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) The Contractor represents that it [_] is, [_] is not a veteran-owned small business concern.

(7) The Contractor represents that it [_] is, [_] is not a service-disabled veteran-owned small business concern.

(8) The Contractor represents that—

(i) It [_] is, [_] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It [_] is, [_] is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(End of clause)

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (MAY 2020) ALTERNATE I (MAR 2020)

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at *https://www.sba.gov/document/support--table-size-standards*.

(e) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

2. The Contractor represents its small business size status for each one of the NAICS codes assigned to this contract.

NAICS code	Small business concern (yes/no)

[Contracting Officer to insert NAICS codes.]

(2) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it [_] is, [_] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it [_] is, [_] is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [*Complete only if the Contractor represented itself as a women-owned small business concern in paragraph (h)(3) of this clause*.] The Contractor represents that—

(i) It [_] is, [_] is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [_] is, [_] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [*The Contractor shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture:* _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [*Complete only if the Contractor represented itself as a women-owned small business concern eligible under the WOSB Program in (h)(4) of this clause*.] The Contractor represents that—

(i) It [_] is, [_] is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [_] is, [_] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture. [*The Contractor shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture:* _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause*.] The Contractor represents that it [_] is, [_] is not a veteran-owned small business concern.

(7) [*Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause*.] The Contractor represents that it [_] is, [_] is not a service-disabled veteran-owned small business concern.

(8) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause*.] The Contractor represents that—

(i) It [_] is, [_] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It [_] is, [_] is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [*The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

[*Contractor to sign and date and insert authorized signer's name and title*.]

(End of clause)

52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)

(a) *Definitions.* As used in this clause—

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.246-26 REPORTING NONCONFORMING ITEMS (JUN 2020)

(a) *Definitions.* As used in this clause—

Common item means an item that has multiple applications versus a single or peculiar application.

Counterfeit item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Critical item means an item, the failure of which is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the item; or is likely to prevent performance of a vital agency mission.

Critical nonconformance means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

Design activity means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. Design activity could be the original organization, or an organization to which design responsibility has been transferred.

Major nonconformance means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

Suspect counterfeit item means an item for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

(b) The Contractor shall—

(1) Screen Government-Industry Data Exchange Program (GIDEP) reports, available at *www.gidep.org*, as a part of the Contractor's inspection system or program for the control of quality, to avoid the use and delivery of counterfeit or suspect counterfeit items or delivery of items that contain a major or critical nonconformance. This requirement does not apply if the Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;

(2) Provide written notification to the Contracting Officer within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.*, seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit;

(3) Retain counterfeit or suspect counterfeit items in its possession at the time of discovery until disposition instructions have been provided by the Contracting Officer; and

(4) Except as provided in paragraph (c) of this clause, submit a report to GIDEP at *www.gidep.org* within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.*, seller, customer, third party) that an item purchased by the Contractor for delivery to, or for, the Government is—

(i) A counterfeit or suspect counterfeit item; or

(ii) A common item that has a major or critical nonconformance.

(c) The Contractor shall not submit a report as required by paragraph (b)(4) of this clause, if—

(1) The Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;

(2) The Contractor is aware that the counterfeit, suspect counterfeit, or nonconforming item is the subject of an on-going criminal investigation, unless the report is approved by the cognizant law-enforcement agency; or

(3) For nonconforming items other than counterfeit or suspect counterfeit items, it can be confirmed that the organization where the defect was generated (*e.g.*, original component manufacturer, original equipment manufacturer, aftermarket manufacturer, or distributor that alters item properties or configuration) has not released the item to more than one customer.

(d) Reports submitted in accordance with paragraph (b)(4) of this clause shall not include—

(1) Trade secrets or confidential commercial or financial information protected under the Trade Secrets Act (18 U.S.C. 1905); or

(2) Any other information prohibited from disclosure by statute or regulation.

(e) Additional guidance on the use of GIDEP is provided at *http://www.gidep.org/about/opmanual/opmanual.htm.*

(f) If this is a contract with the Department of Defense, as provided in paragraph (c)(5) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), the Contractor or subcontractor that provides a written report or notification under this clause that the end item, component, part, or material contained electronic parts (*i.e.*, an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly)) that are counterfeit electronic parts or suspect counterfeit electronic parts shall not be subject to civil liability on the basis of such reporting, provided that the Contractor or any subcontractor made a reasonable effort to determine that the report was factual.

(g) *Subcontracts.*

(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert this clause, including this paragraph (g), in subcontracts that are for—

(i) Items subject to higher-level quality standards in accordance with the clause at FAR 52.246-11, Higher-Level Contract Quality Requirement;

(ii) Items that the Contractor determines to be critical items for which use of the clause is appropriate;

(iii) Electronic parts or end items, components, parts, or materials containing electronic parts, whether or not covered in paragraph (g)(1)(i) or (ii) of this clause, if the subcontract exceeds the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, and this contract is by, or for, the Department of Defense (as required by paragraph (c)(4) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)); or

(iv) For the acquisition of services, if the subcontractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this clause.

(2) The Contractor shall not insert the clause in subcontracts for—

(i) Commercial items; or

(ii) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

(3) The Contractor shall not alter the clause other than to identify the appropriate parties.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

www.ecfr.gov
www.acquisition.gov
http://www.hq.nasa.gov/office/procurement/regs/NFS.pdf

(End of clause)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of (*DEVIATION*) after the date of the clause.

(b) The use in this solicitation or contract of any NASA FAR Supplement (48 CFR 18) clause with an authorized deviation is indicated by the addition of (*DEVIATION*) after the name of the regulation.

(End of clause)

1852.203-70 DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS (JUN 2001)

1852.203-71 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (AUG 2014)

1852.204-76 SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2011)

1852.215-84 OMBUDSMAN (NOV 2011)

1852.219-75 INDIVIDUAL SUBCONTRACTING REPORTS (APR 2015)

1852.219-77 NASA MENTOR-PROTÉGÉ PROGRAM (APR 2015)

1852.223-74 DRUG- AND ALCOHOL-FREE WORKFORCE (NOV 2015) (IBR)

1852.233-70 PROTESTS TO NASA (DEC 2015) (IBR)

1852.235-70 CENTER FOR AEROSPACE INFORMATION (DEC 2006)

1852.237-72 ACCESS TO SENSITIVE INFORMATION (JUN 2005)

1852.237-73 RELEASE OF SENSITIVE INFORMATION (JUN 2005)

1852.204-75 SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989)

1852.246-74 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE (SEP 2020) (IBR)

1852.245-80 GOVERNMENT PROPERTY MANAGEMENT INFORMATION (JAN 2011) (IBR)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of TS/SCI See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification.

(End of clause)

1852.216-80 TASK ORDERING PROCEDURE (OCT 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following data:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within 30 calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within 5 calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

1852.216-80 TASK ORDERING PROCEDURE (OCT 1996) ALTERNATE II (APR 2018)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within 30 calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within 5 calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

(1) Contract number, task order number, and date of the order.

(2) Price and billed amounts to date for each task order.

(3) Significant issues/problems associated with the task order.

(4) Status of all task orders issued under the contract.

(5) Invoice number.

(End of clause)

1852.225-71 RESTRICTION ON FUNDING ACTIVITY WITH CHINA (FEB 2012)(DEVIATION)

(a) Definition - "China" or "Chinese-owned company" means the People's Republic of China, any company owned by the People's Republic of China or any company incorporated under the laws of the People's Republic of China.

(b) Public Laws 112-10, Section 1340(a) and 112-55, Section 539, restrict NASA from contracting to participate, collaborate, coordinate bilaterally in any way with China or a Chinese-owned company using funds appropriated on or after April 25, 2011. Contracts for commercial and non developmental items are exempted from the prohibition because they constitute purchase of goods or services that would not involve participation, collaboration, or coordination between the parties.

(c) This contract may use restricted funding that was appropriated on or after April 25, 2011. The contractor shall not contract with China or Chinese-owned companies for any effort related to this contract except for acquisition of commercial and non-developmental items. If the contractor anticipates making an award to China or Chinese-owned companies, the contractor must contact the contracting officer to determine if funding on this contract can be used for that purpose.

(d) Subcontracts - The contractor shall include the substance of this clause in all subcontracts made hereunder.

(End of clause)

52.227-14 RIGHTS IN DATA--GENERAL (MAY 2014)
(DEVIATED)

(a) *Definitions*. As used in this clause—

(1) “Commercial computer software” means software developed or regularly used for non-governmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(3) “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(5) “Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) “Covered Government support contractor" means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract.

(7) “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(8) “Developed” means the following, as appropriate:

(i) That an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for

sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(9) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations shall be made at the lowest practicable and segregable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(10) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(11) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract. In addition, technical data and computer software developed during collaboration as defined in contract Section H clause, "Use of Government Resources," as well as technical data and computer software developed under work performed pursuant to a Government Task Agreement, are considered to be developed with mixed funding.

(12) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(13) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(14) "Government purpose rights" means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation within the Government without restriction; and

(ii) Release or disclose technical data, computer software, or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(15) "Limited rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor or to entities outside the Government pursuant to agreements and contracts related to the Gateway or Artemis program for interface or integration purposes only; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(16) "Minor modification" means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(17) "Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(18) "Restricted rights" apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), (vi) and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled,
disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled,
disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled,
disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

(19) "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term

does not include computer software or data incidental to contract administration, such as financial and/or management information.

(20) "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data, computer software, or computer software documentation in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *License Rights*. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights:

(1) *Unlimited rights*. The Government shall have unlimited rights in:

(i) Technical data that are form, fit, and function data;

(ii) Technical data or computer software that are otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(iii) Technical data or computer software that are data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;

(iv) Technical data or computer software that are furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired; or

(B) Government purpose rights, and the Contractor's exclusive right to use such technical data or computer software for commercial purposes has expired; and

(v) Technical data that are necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data).

(2) *Government purpose rights in technical data.*

(i) Except when the Government is entitled to unlimited rights in technical data as provided in section (b)(1) of this clause, the Government shall have government purpose rights in—

(A) Technical data that are developed exclusively with Government funds in the performance of this contract;

(B) Technical data that are developed with mixed funding in the performance of this contract;

(C) Technical data that are studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(D) Technical data that are corrections or changes to technical data furnished to the Contractor by the Government; and

(E) All other technical data required to be delivered under this contract, unless such data is delivered with limited rights in accordance with paragraph (b)(4) of this clause.

(ii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to a non-disclosure agreement; or

(B) The recipient is a Government contractor, grantee, or partner receiving access to the data for the performance of a Government contract, grant, or under the terms of an agreement executed pursuant to the Government's other transactional authority.

(iii) The Contractor has the exclusive right, including the right to license others, to use for any commercial purpose technical data in which the Government has obtained government purpose rights under this contract.

(3) *Government purpose rights in computer software.*

(i) Except when the Government is entitled to unlimited rights in computer software as provided in section (b)(1) of this clause, the Government shall have government purpose rights in:

(A) Computer software developed exclusively with Government funds in the performance of this contract;

(B) Computer software developed with mixed funding in the performance of this contract;

(C) Corrections or changes to computer software furnished to the Contractor by the Government; and

(D) All other computer software required to be delivered under this contract, unless such computer software is delivered with restricted rights in accordance with paragraph (b)(4) of this clause.

(ii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to a use and non-disclosure agreement; or

(B) The recipient is a Government contractor, grantee, or partner receiving access to the data for the performance of a Government contract, grant, or under the terms of an agreement executed pursuant to the Government's other transactional authority.

(iii) The Contractor has the exclusive right, including the right to license others, to use for any commercial purpose computer software in which the Government has obtained government purpose rights under this contract.

(4) *Limited rights*.

(i) Except as provided in sections (b)(1) – (b)(3) of this clause, the Government shall have limited rights in technical data if such data is listed by the Contractor in the *Assertion Notice* in

accordance with paragraph (f) of this clause and marked with the limited rights legend prescribed in paragraph (g) of this clause.

(ii) For all technical data delivered with limited rights under this contract, the Contractor shall furnish form, fit, and function data in addition.

(iii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iv) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(v) The Contractor acknowledges that—

(A) The Government is authorized to release or disclose limited rights data to covered Government support contractors and to entities outside the Government pursuant to agreements and contracts related to the Gateway or Artemis program for interface or integration purposes only;

(B) The Contractor will be notified of such release or disclosure; and

(C) The Government makes such disclosure subject to prohibition against further use and disclosure.

(5) *Restricted rights*.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense if such software is listed by the Contractor in the *Assertion Notice* in accordance with paragraph (f) of this clause and marked with the restricted rights legend prescribed in paragraph (g) of this clause.

(ii) For all computer software delivered with restricted rights under this contract, the Contractor shall furnish form, fit, and function data in addition.

(iii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government.

(iv) The Contractor acknowledges that—

(A) The Government is authorized to release or disclose restricted rights computer software to covered Government support contractors and to entities outside the Government pursuant to agreements and contracts related to the Gateway or Artemis program for interface or integration purposes only;

(B) The Contractor will be notified of such release or disclosure; and

(C) The Government makes such disclosure subject to prohibition against further use and disclosure.

(6) *Specifically negotiated license rights*. After contract award, the license rights granted to the Government under this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate, but shall not provide the Government lesser rights than limited rights for technical data and computer software documentation, or lesser rights than restricted rights for computer software. Any rights so negotiated shall be identified in a license agreement and incorporated into this contract.

(7) *Prior government rights*. Technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise and attached that agreement to this contract; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(8) *Release from liability*. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with this clause, in accordance with the terms of a license negotiated under the terms of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data*. All rights not granted to the Government are retained by the Contractor.

(d) *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(e) *Third party copyrighted data*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract, or incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract, unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data, software, or documentation of the appropriate scope as set forth in this clause, and: for technical data, has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document; for computer software, prior to delivery of such, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or, for computer software documentation, prior to delivery of such, has affixed to the transmittal document a statement of the license rights obtained.

(f) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.*

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) In an attachment to their proposal, the Contractor shall identify all technical data and computer software that the Contractor asserts should be furnished to the Government with rights less than unlimited rights or government purpose rights (the *Assertion Notice*). During or after contract performance, the Contractor shall not deliver any technical data or software with restrictive markings unless the data or software is listed in the *Assertion Notice*.

(3) When requested by the Contracting Officer, the Contractor shall provide additional, sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the *Assertions Notice* and validate any listed assertion, at a later date, in accordance with the procedures specified in contract section H clause Validation and Challenge Procedures for Technical Data and Computer Software.

(4) In addition to the assertions made in the *Assertion Notice*, other assertions may be identified after award when based on new information. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data or software using the *Assertion Notice* format.

(5) *Assertion Notice.* The Contractor shall use the following *Assertion Notice* form to comply with the requirements of paragraphs (f)(2)-(4) of this clause. An official authorized to contractually obligate the Contractor shall sign each Assertion Notice submitted by the Contractor to the Government.

Assertion Notice

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Contractor asserts for itself, or the persons identified below, that the following technical data and computer software should be delivered to the Government with less than either unlimited rights or government purpose rights:

Technical Data or Computer Software to be Furnished with Restrictions*	Basis for Assertion **	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Assertions shall be made at lowest practicable and segregable level.

**Enter the specific reason for asserting that the Government's rights should be restricted. Generally, the development of an item, component, or process exclusively at private expense is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software under this contract. If the contractor's Collaboration Plan proposes collaborative development of any technical data or computer software, or if the contractor proposes the use of one or more Government Task Agreements (GTA) for performance of this contract, the Contractor shall propose delivery of technical data and computer software created under those arrangements with no less than government purpose rights.

***Enter asserted rights category (e.g., rights in SBIR data generated under another contract, limited rights under this or a prior contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date
Printed Name and Title

Signature

(End of identification and assertion)

(g) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on charges for rights in technical data or computer software.*

(1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data, software, or documentation; or

(ii) The data, software, or documentation are available to the public without restrictions.

(2) This limitation—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(i) *Technical data or computer software previously delivered to the Government.*

(1) The Contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(i) The contract number under which the data or software were produced;

(ii) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(iii) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(j) *Flow down to subcontractors and suppliers*.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(4) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(5) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data, computer software, or computer software documentation from their subcontractors or suppliers.

(6) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data, computer software, or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (MAR 2020) ALTERNATE II (NOV 2016) (DEVIATED)

(a) This clause does not apply to small business concerns.

(b) *Definitions*. As used in this clause—

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq*.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

Commercial item means a product or service that satisfies the definition of commercial item in Federal Acquisition Regulation (FAR) 2.101.

Commercial plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.,* division, plant, or product line).

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

Total contract dollars means the final anticipated dollar value, including the dollar value of all options.

Untimely payment means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c) (1) The Offeror, upon request by the *Contracting* Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2) (i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if–

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror’s subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small

disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of–

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with–

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will–

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity *contracts with individual subcontracting plans where the contract is intended* for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its *unique entity identifier*, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own *unique entity identifier*, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.,* SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if–

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This

written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, in which a small business concern

received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii) (A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702 a)(1)(iii) or 19.301-2(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides–

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*. (i) Reports submitted under individual contract plans–

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR 19.702(a), and the contract and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan*-

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

52.216-22 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the *maximum.* The Government shall order at least the quantity of supplies or services designated in the Schedule as the *minimum.*

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided,* that the Contractor shall not be required to make any deliveries under this contract after the last day of the performance period on any IDIQ.

(End of clause)

SECTION J - LIST OF ATTACHMENTS

Attachment	Description
J-1	Option A SOW
J-2	Option A DPD
J-4	Design and Performance Metric Tables
J-5	Milestone Acceptance Criteria and Payment Schedule
J-6	Option A Domestic Source Certification
J-7	Option A Small Business Subcontracting Plan
J-8	Option A Performance Work Statement
J-9	Option A Data Rights Assertion Notice
J-10	Option A Organizational Conflict of Interest Plan
J-11	Option A Project Management Plan
J-12	Proposal Attachments